THE CAMBRIDGE HISTORY OF IRAN

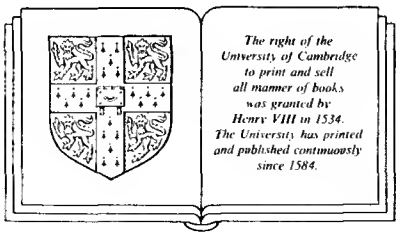
Volume 3(2)

THE SELEUCID, PARTHIAN AND SASANIAN PERIODS

edited by

EHSAN YARSHATER

Hagop Kevorkian Professor of Iranian Studies
Columbia University, New York



CAMBRIDGE UNIVERSITY PRESS

CAMBRIDGE

LONDON NEW YORK NEW ROCHELLE

MELBOURNE SYDNEY

Published by the Press Syndicate of the University of Cambridge
The Pitt Building, Trumpington Street, Cambridge CB2 1RP
32 East 57th Street, New York, NY 10022, USA
10 Stamford Road, Oakleigh, Melbourne 3166, Australia

First published 1983
Reprinted 1986

Printed in Great Britain at the
University Press, Cambridge

Library of Congress catalogue card number: 67-12845

British Library Cataloguing in Publication Data
The Cambridge history of Iran.
Vol. 3: The Seleucid, Parthian and Sasanian periods
1. Iran—History
I. Yarshater, Ehsan
955 DS272

ISBN 0 521 20092 X Vol. 3(1)
ISBN 0 521 24693 8 Vol. 3(2)
ISBN 0 521 24699 7 Vol. 3(1) and (2)

CHAPTER 18

IRANIAN SOCIETY AND LAW

1. SOURCES[1]

For the questions dealt with in this chapter the available sources are markedly uneven in quality: evidence for the Parthian period is extremely meagre and fragmentary when compared with the information provided by the written sources of the Sasanian period.

Historical records in the Iranian language for the Parthian period, if such ever existed, have not survived. Some information, very scanty and inadequate, can be gathered from the works of Greek and Roman writers who lived in that period, and also from later Syriac and especially Armenian texts which sometimes refer back to events of the Parthian period and preserve a number of social and legal terms. Of incomparably greater value is the Parthian epigraphic evidence, the three private-law documents of the 1st century B.C. and the 1st century A.D. from Avroman (the earlier two are in Greek, the third in Middle Iranian), and some parchments from Dura-Europos which belong to the period of Parthian rule. During excavations of the Parthian fortress Mihrdātkart (at Nisā in modern Turkmenistān) Soviet archaeologists found about 3,000 potsherds inscribed in Parthian. The inscriptions cover the period from the end of the 2nd century B.C. to the middle of the 1st century A.D. They are mostly accounts, and the majority of them were found in the wine-storehouse where contributions in kind from neighbouring vineyards were assembled. Many of these documents have been published, but full publication is still in the preparatory stage.

No Iranian historical texts have survived from the Sasanian period;[2] *Kār-nāmak ī Artaxšēr ī Pāpakān* ("The Book of the acts of Ardashīr Pāpakān") must be classed as a literary document and was probably written when the Sasanian period was over. Western sources, though valuable for the political history of Iran, are almost valueless for the country's social history, which is what we are concerned with here. In this connection the Syriac texts and Armenian historical works con-

[1] In this chapter the author has employed an earlier, more archaic form of Middle Persian words and names than prevailed in late Sasanian times; thus *Mātakdān*, *Dēnkart*, *nāmak*, Artaxšēr, *rat*, rather than *Mātīgān*, *Dēnkard*, *nāmag*, Ardašīr, *rad*. Ed.

[2] That a Sasanian historical chronicle, *Xvatāy-nāmak*, did once exist is known to us through Arab writers (Ṭabarī, Tha'ālibī) who used it, or paraphrases of it. See pp. 359ff.

temporary with the Sasanians are considerably richer in content. The Armenian written tradition is of very great interest to the Iranist, owing to the close resemblance between Armenian and Iranian state and social organization and legal institutions and also because the Armenians borrowed social and legal terminology from Iran. The Sasanian period is much better represented than the Parthian in respect to epigraphic monuments, in particular by the great inscription (in Middle-Persian, Parthian and Greek) of Shāpūr I from Naqsh-i Rustam (Ka'ba-yi Zardusht), the inscriptions of the priest Kartīr, the inscription of King Narseh from Paikuli, and the inscription from Fīrūzābād of the *vazurg-framātar* of Iran, Mihr-Narseh, all of which contain valuable information on social and legal institutions. But the most important, the fundamental source of information about these institutions is, of course, the Sasanian Law-Book.

Law was not codified on an all-Iran scale in Sasanian times and this document is not actually a code but a collection of law-cases embracing all branches of private law. The title of the collection is "The book of a thousand judicial decisions" (*Mātakdān ī hazār dātastān*). It was intended for practical use in legal proceedings and was compiled in the reign of Khusrau II Aparvēz (Parvīz) by a man named Farraxvmart ī Vahrāmān, who lived in Fārs, in the town of Gōr (Fīrūzābād), in the district (*tasūk*) of Artaxšahr-Xvarreh (Ardashīr-Xurra). A brief survey of the materials used by the compiler of the Law-Book will give the reader a clearer idea of the nature of this monument, the richness of the information it contains and its value as an historical source.

Ancient Iranian law, like all ancient law, was sanctified by a religious ethic and constituted a part of this ethic. The canon of the Avesta included a number of legal nasks which have not survived but which are mentioned in the *Dēnkart*, the Pahlavī Zoroastrian "encyclopaedia" of the 9th century A.D. Book VIII of the *Dēnkart* contains epitomes of these nasks in the form of indexes or subject-lists.

In the Sasanian period, too, the legal nasks of the Avesta were used in legal proceedings, but not directly. The language barrier was not the only reason for this. The law of the Avestan nasks was certainly primitive in comparison with the level of development which had been reached by the society this law was serving. During the centuries that had elapsed since they were compiled (in approximately the 6th century B.C.) Iranian law had gone through a considerable evolution, along with Iranian society. And though the authority of the legal nasks was as

sacred as ever, they could not satisfy the requirements of the new conditions. It is clear that very early, long before the Sasanian period, the practice of making oral commentaries on these nasks had become widespread. It is not known when the first written commentaries appeared, but probably this also happened under the Arsacids. According to the Law-Book, written commentaries on the legal nasks of the Avesta provided the basis for legal proceedings as early as the middle of the Sasanian period. They were called *Čāštak* ("Precepts", "Teachings") and references to them, with mention of their authors, the commentators on the Avesta, together with actual quotations from them, are fairly frequent in the Law-Book. Some of the authors of commentaries on the non-legal nasks of the Avesta, such as Sōšyans, Martak, Mēṯō(k)māh and Aparak, also wrote legal commentaries, but a number of authors' names appear now for the first time. These legal commentaries were written at different times, the earliest of those used in the Law-Book dating probably from the end of the 3rd century or the beginning of the 4th. There were also law "schools" composed of followers (Aparakīkān, Mēṯō(k)māhīkān) of one or other of these commentators, the *dastabar*s. It was through these commentaries that certain legal terms from the Avesta found their way into Sasanian legal practice. Comparison of the articles quoting or expounding these commentaries and the 8th book of the Dēnkart shows that the 9th-century epitomes were made from the Pahlavī commentaries, and not directly from the Avestan nasks.

Besides these commentaries, the compiler of the Law-Book also refers to and quotes from "collections of judicial decisions", evidently put together for the special purpose of helping judges – in particular, the *Dātastān-nāmak*.

There are also direct indications of the activities of the high priests (*magupatān magupat*) in the field of legislation and judicial organization. Thus, in four articles of the Law-Book mention is made of the "Memorandum" (*aβyātkār*) of Veh-Shāpūr, the magupatān magupat. This is the same Veh-Shāpūr who under Khusrau I Anūshīrvān headed the commission on the canon of the Avesta. Veh-Shāpūr's "Memorandum" deals with procedural questions and, in particular, the drawing-up of records of interrogation during the investigation of capital offences. This document was written down from Veh-Shāpūr's dictation and reproduced in copies which, authenticated by his seal, were then circulated to the provinces.

Other sources used by the compiler were the "Book (or Instruction) regarding the duties of magupats" (*Xvēškārīh-nāmak ī magupatān*) and the "Book about the duties of officials" (*Xvēškārīh-nāmak ī kār-framānān*). The latter contained, notably, the instruction of the *rat* (spiritual master) Mahraspand (evidently the father of Āturpāt ī Mahraspandān, a figure in the Zoroastrian "church" well known for his fanaticism in the reign of Shāpūr II, 309–379) concerning the confiscation for the King's treasury of the property of Manichaeans and persons spreading their doctrine.

A special work or instruction on procedure for appeals was called *Mustaβar-nāmak*.

The Law-Book also cites decrees issued by certain Sasanian kings, with interesting details. For example, decrees by three kings, Bahrām V, Yazdgard II and Pērōz about the punishment of the *vazurg-framātar* of Iran, Mihr-Narseh, and the orders issued by the kings Kavād and Khusrau I about seals. Perhaps the most interesting of them, despite the fact that it is not completely clear, is the decree of Khusrau I on judicial reform and a general review of judicial procedures and sentences.

This does not, however, exhaust the range of sources utilized – and frequently quoted – in the Law-Book. The compiler had access to the archives of the tasūk of Artaxšahr-Xvarreh and also the court records of the town of Gōr. He quotes from entries in court records, from the minutes of interrogations, from a decision by the *rat*s and *kār-framān*s (officials) of Artaxšahr-Xvarreh.[1] Farraxvmart ī Vahrāmān also quotes the wills, to which he was given access in the archives, of Veh-Shāpūr, the magupatān magupat, and Dāt-Gušnasp, of the noble family of Šahr-Zapalakān (both of whom were contemporaries of Khusrau I), and other private documents.

The sketch of Iranian society and law offered in this chapter is based mainly on the Sasanian Law-Book. Although this document is by far the richest source of information on our subject, other sources help us to understand certain passages in the Law-Book, and sometimes provide additional information. Among these other sources, besides those already mentioned, are later Pahlavī documents, especially *Dātastān ī dēnīk* (9th century A.D.) and *Rivāyat ī Ēmēt ī Ašavahištān* (10th century),

[1] The quotation from this decision gives us an idea of the opening formula used in documents of this kind: they begin by giving the date, in terms of the king's reign, and the *ōstikān*ship of such and such a person, and then comes the phrase – "it has been decided by the *rat*s and *kār-framān*s of Artaxšahr-Xvarreh".

and also a Pahlavī specimen of a marriage-contract which reproduces the pattern of Sasanian documents of this type. An important supplement to the Law-Book is provided by Book VIII of the *Dēnkart*, and also by a legal compilation made for the Christians in Sasanian Iran, the Law-Book of Yišō'boxt, which has come down to us in a Syriac translation. In so far as the Christian communities of Iran were brought into contact with the Zoroastrian population through disputes involving the law of property and obligations, it was inevitable that they should adopt Iranian legal norms in this sphere. The same may be said of the Babylonian Talmud, a collection of law cases and norms compiled for use by the Jewish communities of the Sasanian realm.

Of the documents in Persian those most useful for our purposes are the "Letter of Tansar" and the "Persian Rivāyats".

2. SOCIAL ORGANIZATION

The structure of the society to be discussed in this chapter evolved through a process of social and property stratification which began under Achaemenians and even earlier. Although the centuries that elapsed between the foundation of the Parthian state and the downfall of the Sasanians saw some change and development, this factor will be disregarded here, since social (and legal) institutions are fairly conservative and slow to change, and also the present state of the sources does not enable us to trace the course of these changes and bring out their dynamic with any degree of precision.

The complexity and variety of the Iranian social scene at this time have long been a commonplace of historical writing. Besides the members of the king's family, the vassal rulers, courtiers and high officials of state, all of whom were persons of considerable wealth, there were the middle and petty service nobility (who received from the treasury, in payment for their service, both rations and allotments of land in hereditary conditional possession), a priesthood, urban middle strata made up of merchants and craftsmen, a mass of country people living in village communities, and also slaves. Finally, there was a quite numerous nomadic population, who still retained gentile-tribal forms of organization and a primitive patriarchal economy. Accordingly, Iranian society may be studied in a number of different aspects, of which four will be discussed in this chapter: (*a*) the division into social estates; (*b*) citizenship and lack of citizenship; (*c*) class and

legal status (non-slaves and slaves); (*d*) organizational structures (i.e. social units).

Social estates. There is no mention in sources of the Achaemenian and Parthian periods of the ancient division of society into estates of which we learn from the Avesta, and there is no evidence that such a division existed in the first half of the Sasanian period. That such a division existed in the subsequent period (from the 5th century on) we know from Pahlavī sources, from the works of Byzantine writers (Procopius of Caesarea) and Arab writers, and from Persian tradition.

It is equally difficult to assume either that the lack of evidence in the earlier sources (especially in the Greek sources) is merely accidental or that the well attested division of Iranian society into social estates in the later period was an entirely artificial creation of that period, with no real roots in the past. Evidently, with the appearance of a state in Iran and the emergence into the foreground of other forms of social organization, the rôle of this ancient division into estates markedly declined.

On the other hand, there can have been no special social-estate administration, nor did this exist in the society reflected in the Avesta. The estate-terms found in the Avesta left no trace in the living language of later times. The ancient estate of "priests" (Av. *āθravan-*) apparently came very early to be denoted by the term "magian" (Iran. *magu-* > *moγ*), and the ancient estate of "warriors" or "charioteers" (Av. *raθaēštar-*) was replaced by the new noble estate, *āzātān* (in Greek documents from Iran representatives of this estate were called ἐλεύθεροι, by association with the homonym *āzāt*, "free"). This estate might also include the "horsemen" (*asaβarān*) of non-noble origin who served in the regular cavalry and received from the treasury allotments of land in conditional possession. The development of urban life, the crafts and trade, and the appearance of a bureaucracy must have led to still greater changes affecting the third estate, (*ram*, "flock"), the ancient "cultivators" (Av. *vāstryō.fšuyant-*).

Meanwhile, as early as the end of the 3rd century A.D., the process had begun of transforming the Zoroastrian priesthood into a state "church", which from the reign of Shāpūr II onward began to play an ever greater rôle. The strengthening of its economic power and internal organization, which proceeded in close alliance with the monarchy, was accompanied, of course, by a tremendous growth in its

ideological influence. The prestige of the Avesta became especially great. For this reason, when a new division into estates was introduced, not later than the beginning of the 5th century A.D. (this reform was a purely bureaucratic one), on the one hand the real situation was taken into account, on the other, the nomenclature of the Avesta was revived (in the Pahlavī "learned" version).

The reform established four main estates (*pēšak*). First, as before, came the "priests" (*āsrōn*, *'srwn*, Pahl. transcription of Av. *āϑravan-*), with which the "judges" (*dātaβarān*) were also associated. In the second place stood the estate of "warriors" (*artēštarān*, transcription of Av. *raϑaēštar-*). The third place was assigned to a new estate, the "scribes" (*dipīrān*), comprising the numerous members of the bureaucracy. The "cultivators" (*vāstryōšān*, transcription of Av. *vāstryō.fšuyant-*) formed the fourth estate, along with the "craftsmen" (*hutuxšān*, literally "diligent", "zealous", an artificial term, perhaps an adaptation of the phonetically similar Av. *hūiti-*).

Subdivisions were also introduced within the estates. The fourth estate included "cultivators", "craftsmen" and "merchants", while the first was apparently subdivided into "magians" ("magupats"), *ēhrpats* (< Av. *aēϑrapati-*) and "judges". Membership of a particular estate was hereditary and movement from one to another was extremely difficult. Each estate was also given a bureaucratic administration covering the whole empire, and the person appointed to be head of an estate did not need to belong to that particular estate. Thus, of the three sons of the "prime minister" of Iran, Mihr-Narseh (5th century), one, Zurvandāt, was *ēhrpatān-ēhrpat*, head of the ēhrpats, while the second, Māh-Gušnasp was head of the "cultivators" (*vāstryōšānsālār*) and the third, Kardār, headed the estate of "warriors" (*artēštarānsālār*).

But this reform, which sought in a bureaucratic way to enhance the significance in Iran of the division into estates, did not dislodge the stress laid on the social antithesis between those who had rights of citizenship and the rest, and, among the citizens, between the "nobility", who held a privileged position in the field of public law, and the rest, and finally, between all these social groups and the slaves, who had no civic rights.

Civic status. Only a member of a civic community (of whatever estate) was a legal person in the full sense. The position of a freeborn man who was outside a community was similar to that of a pariah;

the advantages enjoyed by a member of a civic community were closed to him. Every member of a community could not only inherit within his community but also acquire real property and make use of whatever belonged to the community as a whole. A system of mutual responsibility and solidarity also operated within the community. Membership of a community conferred the right to take part in social life and religious worship, guaranteed security of succession and ensured the protection of widows and orphaned minors. In other words, the status of a citizen enabled a man to take full and active part in economic, social and religious life and offered him and his family definite safeguards.

As will be shown later in the section on "agnatic groups", the road to citizenship was opened by entry into one of the structures which made up the community. The whole of the subsequent exposition in this chapter is aimed at giving an idea of the forms in which civic rights existed in Iran and the standards which guided social practice.

For the present, in connection with legal personality, it should be noted that the scope of a person's legal capacity and competence varied with sex and age: women and minors had a limited (passive) legal capacity. Greater or lesser loss of rights, even complete loss, could result from conviction for crime.

A Zoroastrian who adopted another religion was deprived of his position in his former family and community and, consequently, of all the rights linked with that position, but he kept his rights as regards contractual obligations and his personal property. When he entered another, non-Zoroastrian, community he did not cease thereby to be a civic person.

In Middle-Persian documents we find used to define a person's membership of a civic community, in addition to the expressions āzāt and *hamnāf* (literally, "agnate"), also the expressions *ādēhīk* (literally, "fellow-countryman"; cf. Av. *ādahyav-*) and *mart ī šahr* ("citizen").

Non-citizens. Slaves. The inhabitants of Iran who were without civic rights included other groups besides the slaves. These were persons who, though formally free, were not members of civic communities, "aliens", casual settlers, or persons who had been expelled from a community, and their descendants (Middle Persian *uzdēh*, *uzdēhīk*). Also in this category were the illegitimate children of full-right members of the community and, apparently, their descendants, who lived in the

family as semi-dependent persons with restricted rights. As a rule, freed slaves were also included in this category.

Though the number of freemen who were not members of any community was great, the difference in social and legal status between slaves and *all* non-slaves was so sharp that it is these two categories that predominate in Iranian private law, references to the legal position of the "intermediate" groups occurring only rarely.

We have evidence from classical sources about the slaves in Parthian Iran. For example, in a letter to Atticus, Cicero mentions a runaway slave who said he had worked in the mines of the Parthian King; in proof of his story the slave showed a mark branded on his body. Slave labour was used not only in the royal mines but also, on an especially large scale, in agriculture, building and in the crafts. Diodorus Siculus says[1] that Himerus (Euhemerus), vice-gerent of Phraates (Frahāt) II in Babylonia, enslaved a large number of Babylonians and sent them to Media to be sold there as booty. There must have been a demand for slaves in that province, or else Himerus would not have found buyers. According to Plutarch[2] there were many slaves in the army of the Parthian general Suren. Since slaves were a form of wealth (and a productive one), rich men became owners of a large number of slaves. The Sasanian vizier Mihr-Narseh was surnamed "Hazārbandak", that is, "owner of a thousand slaves". Temples were also slaveowners; this is definitely attested for Zoroastrian temples in the Sasanian period (see below).

Despite the extensive use of slave labour in Iran, the economy was mainly sustained by the work of the free population. Nevertheless, the existence of slavery must not be underestimated as a factor in economic and, especially, in social life; it found reflection both in law and in people's social psychology. For this reason the Iranian evidence regarding this institution will be given in more detail.

Middle-Persian documents provide us with a whole series of expressions designating slaves; *bandak* (literally, "bound"), *anšahrīk* (literally "outlander"), *rahīk* (literally, "bound"), *tan* (literally, "body"; cf. Greek σῶμα), *vēšak* (literally, "belonging to a *vis*, i.e. a *gens*"; cf. Khotan Saka *bisa*, "slaves"), and others. The most commonly used of these are bandak and anšahrīk.[3]

[1] XXXIV/XXXV. 21. [2] *Lives*, "Crassus", XXI. 7.

[3] The first of these terms is used in documents also in the sense "subject of the sovereign" (*šāhān šāh bandak*, *i.e.*, "subject of the King of Kings"). An analogous case occurs in the definition of *manā ba*^{n}*daka*^{h} in Darius's inscription at Bīhistun.

The chief and most characteristic feature of a slave in Iranian law is that a slave was a "thing" (*xvāstak*), a saleable article.[1] Like any other thing, he was an object of real right (*ius in re*) on the part of a private individual, the king or a temple, and could be the object of transactions – buying and selling, gifts, leases. He could serve as security for a mortgage or an antichresis either along with a plot of land or on his own. A slave employed in agriculture and living on a plot of land (*dastkart*) that belonged to his master constituted, together with the draught animals, the livestock of this dastkart and could be alienated along with it. The foetus of a pregnant slave-woman was regarded as part of the "thing", i.e. the slave mother, and therefore was subject not only to the right and authority of the slave-woman's owner but also to whatever disposition of the slave-woman might be made by the owner. It was in the power of the owner not merely to sell or transfer full ownership of a slave to another man but also to sell or transfer half-ownership or other part-ownership (as with part of a thing). The slave then became the joint property of two or more persons, each of whom owned and disposed of him in accordance with his "ideal part" (theoretical share) in this joint property. In practice such a slave was owned and used by his masters turn and turn about, depending on the share owned by each and the terms of the deed of purchase. Children born to such slaves inherited their status. A slaveowner could also sell or transfer separately the income from his slave. Finally, the law allowed the slave owner to recover by legal process, through a civil suit, a slave who had run away or been abducted by a third party.

Thus from the standpoint of Iranian law slaves belonged to the category of things. This definition, however, would be one-sided if left at that. Here we come upon an internal contradiction which runs through the legal thinking of all the societies of antiquity and appears in their juridical standards, and which is reflected in the norms of Iranian law. Though the slave was regarded as a thing and dealt with as such, the human nature of this "thing" could not easily be ignored. The religious law of several ancient peoples regarded the slave as to some extent a person. The slave's human faculties, his possession of reason, speech and capacity for purposeful activity, greatly extended his potential usefulness to his owner as compared with other "things",

[1] The value of a slave depended on age, sex and skill, and also on the state of the market (*arž i šahr*). The average price of an adult male slave in the late Sasanian period is given in the Law-Book as 500 drachms (but this figure may, of course, have been distorted by copyists).

since this "thing" might be exploited in a wide variety of ways. Many tasks could be entrusted to a slave, especially if he was trained, and these were not confined to the household: he could be assigned business commissions to perform in the outside world. Clearly, the slave's complete lack of legal capacity and competence restricted the sphere in which slave labour could be used. The economic development of Iran, the increasing complexity of production and commerce, opened up ever new possibilities for the exploitation of slaves and stimulated the recognition of some legal standing for slaves. While continuing to be an object of right, the slave becomes, though only to a limited extent, a subject of right as well. The legal capacity of a slave was not only limited (even in the best of cases it did not exceed that of a subordinate person – a woman, a ward), it was in general not something constant, ascribed to the slave from birth and handed down from father to son; the slave's owner assigned him this or that right, and what rights he had, and within what limits, depended on his owner's will, as did also the duration of these rights. For example, some articles in the Sasanian Law-Book show that a slaveowner could transfer a thing to his slave, and could enable him to receive a gift from a third party; in other words, he could assign to his slave a capacity for acquisition. Even in cases like this, however, when a slave appears as the possessor (or even owner) of a thing, it is a matter of a privilege granted to the slave by his master. Should some third party give a thing to a slave, this gift becomes the slave's only if his owner refrains from declaring that *he* takes possession of it, that is, renounces his legal right to the ownership of the thing. Even over something that belongs to the slave, however, the slave-owner retains a latent right, and when the slave dies his owner, and not the slave's child, inherits the thing. No indication is to be found in the Law-book, direct or indirect, that a slave could alienate property or undertake obligations in his own right, which is perfectly natural, since slaves had no active legal capacity in relation to property, any more than free dependants (*personae alieni iuris*) had.

Another sphere in which some elements of legal personality for slaves are found is that of legal capacity in relation to delictual and procedural matters. A slave could take part in litigation, even as one of the parties; not, however, in all types of litigation, but only in certain types of civil suit, in particular in those involving disputes over property. Even in these cases the Sasanian Law-Book provides examples which excellently illustrate the dual nature of the slave's position. Thus,

in one of the articles,[1] the plaintiff demands the return of a slave who has either fled on his own initiative to another master or has been appropriated by the latter, illegally from the standpoint of the plaintiff (a case of revindication). The respondent in the case is the slave himself, though he has no free status *de facto:* his claim is not that the plaintiff has manumitted him, but that he belongs to the other man. By standards of Western law it would have been more natural for the plaintiff to have brought action for the return of a thing, his property, against the one who now holds it, and not against the thing itself, i.e. the slave, so that the case would proceed entirely within the channel of revindications of real rights (= rights in the thing) with the disputed slave remaining in the category of things. As it is, in this Sasanian law-case the slave appears in two aspects at once: the plaintiff sues for recovery of the slave as a thing belonging to him but addresses his suit to the thing itself, to the slave as a subject and as a party to the suit; moreover, since his present master is not drawn into the case, the slave appears as a legal person, while at the same time declaring himself to be the property of a third party, that is, declaring himself to be, not a subject, but an object, i.e. a thing.

A slave could even sue his own master for cruel treatment, appearing in court as plaintiff; in one case a slave had allegedly been thrown by his master into the Tigris.[2] A slave-owner was obliged to compensate a slave for a mutilation inflicted on him. A slave could appear as witness in a judicial investigation of any kind – not, however, on his own, but only along with a citizen possessed of full rights: only then was the slave's evidence entered in the report of the examination (the same rule applied to subordinate persons, such as women). A slave had no right to swear an oath.

A slave was not recognized by law as having a family. Even if the slave lived with "his" family, the different members of it might belong to different owners and at any moment be separated for ever. But a Zoroastrian slave was officially recognized as having the right to practise his religion, and in order to ensure that it would be actually possible for him to do this, it was forbidden, at any rate in the later Sasanian period, to sell such a slave to an infidel. A slave who embraced Zoroastrianism could leave an infidel master and become the slave of a new, Zoroastrian master; his previous owner had no right, when this happened, to demand the return of the slave to him, he could only

[1] *Mātakdān* 107.9–12. [2] *Mātakdān* A 13.11–13.

claim compensation for the value of the slave from the latter's new owner.

In this way Iranian written records depict the dual nature of the slave in relation to the law. On the one hand the slave is an object of right, a thing. This is his permanent and constant feature, his primary nature, beside which appears his second nature, the presence in him of elements of legal personality, of a subject. The slave's second nature is subordinate to his first. His rights as a subject are not governed by rules: with few exceptions (religious law and some elements of delictual and procedural legal capacity) they are determined by his master's will, and even in the best case, do not go beyond the rights of subordinate persons (women and minors). In this respect the institution of slavery in Iran did not differ substantially from slavery in other countries of Antiquity (though there might be differences in the scale on which slavery had developed, and also in certain minor details). The Roman jurists, who liked precise formulations, defined the relationship between master and slave in two expressions, *dominium* (meaning power over a thing) and *potestas* (meaning the authority of the head of a household over the unemancipated members of his family). The Sasanian jurists took the same line (though Iranian law was quite independent of Roman law), using two expressions to define this relationship, namely, *xvēšīh* ("lawful ownership of a thing", "real right") and *patixšāyīh* ("authority", in particular the patriarchal authority of the head of a household, *manus*).

Escape from the condition of slavery was effected through manumission, a legal act whereby a slave received his freedom from his master. This took place at the will of the master: in only one circumstance was the slave allowed the right to buy his freedom on his own initiative, namely, if the slave embraced Zoroastrianism and his master was a non-Zoroastrian. The freedman was given a certificate of manumission, *āzāt-nāmak*. Manumission was absolute. The slave became a free man under the protection of the law, as a "subject of the King of Kings", he could never be returned to slavery. Free status extended to the slave's offspring born after his release from slavery.

Iranian manumissions were of two kinds: (*a*) manumissions resulting in complete liberation of the slave; (*b*) manumissions involving partial liberation, when the slave was given only an "ideal part" (theoretical fraction) of his freedom – one-half, one-third, one-quarter, one-tenth. Partial manumissions were unknown to Greek and Roman law, but

are found in the local law of Hellenistic and Roman Egypt, and were also practised in the Christian and Jewish communities of the Sasanian Empire (the "Law-Book" of Yišō'boxt and the Babylonian Talmud). They took place under two conditions: when the master to whom a slave wholly belonged manumitted him to a limited extent, and when a slave who was jointly owned by two or more persons received his freedom from one of them.

There are no signs that in Iran the manumitting master exercised patronage over his freedman. There are grounds, however, for supposing that a freedman who was a Zoroastrian entered the system of agnatic kinship of his manumittor. At all events, if a freedman died without offspring born after his liberation, the agnatic group of his former master was obliged to establish a *stūrīh* for him (see section 3, under the heading "Succession"); the order of relationship was reckoned from the manumittor and one of the latter's successors was designated as the freedman's *stūr*.

Hierodouloi (*sacred slaves*). The Zoroastrian temples owned slaves whose labour was used on the temple estates. There were, however, also "slaves of the temple" (*ātaxš bandak*, *āturān bandak*), who are distinguished in the "Law-Book" from the slaves who worked on the temple estates. These "slaves of the temple", or *hierodouloi* "belonged" to the temple in that they were dedicated to it, but they did not constitute a special social category, and were not slaves in any real sense. Their connection with the temple was religious.

Both men and women could become hierodouloi, as a result of honorary dedication. In the Law-Book sacred slavery is defined as a condition of complete civic freedom, "freedom before men", but "slavery" before "the Fire", that is, the fire-temple. Among the hierodouloi there were persons of most noble origin, for example, Mihr-Narseh, a representative of the noble family of the Mihranids. King Bahrām V (421–439) handed over Mihr-Narseh "as a slave" to the fire-temple of Artvahišt and that of Afzōn-Artāšir (the royal fire-temple) and for several years he was a sacred slave of these temples. Later, as a result of some offence committed by Mihr-Narseh, the nature of which is not specified, Yazdgard II (439–457) ordered that he be transferred to the royal estates (*ōstān*), to work there as a punishment, a sentence which he served for several years. Then, by a third king, Pērōz (459–484), with the agreement of the magupatān magupat

Martbūt and others who "were there" (presumably, in the king's council), he was again transferred to temple "slavery"[1] – not, however, to the temples where he had "served" before but to another one, the fire-temple of Ohrmizd-Pērōz (also one of the royal temples), in strict accordance with the general rule by which a "temple-slave" who had committed an offence and had served his sentence on the royal estates must be transferred to another temple.[2] Both in the temples and on the ōstān Mihr-Narseh was accompanied by his wife (presumably his chief wife) and a slave. We know, too, that in the temples Mihr-Narseh was an *āturvaxš*, a minister of the cult, whose task it was to ensure that the fire did not go out, while his wife was a sacred slave, a hierodoule (*paristār*) and the slave was a slave, that is, he waited on them. It may be supposed that temple-slaves of noble origin performed some kind of liturgy for the temple, as well as taking part in worship, but we have no evidence of this.

The temples gave protection to their hierodouloi. For instance the famous fire-temple of Farnbāγ ransomed "from the enemy", out of its own funds, certain of its hierodouloi who had apparently been taken prisoner while on active military service.[3]

Agnatic groups. So far we have been looking at Iranian society from the standpoint of its stratification into estates and classes. Now we must examine the structures which were fundamental to the organization of the whole civic population of Iran.

From very early times, well before the Parthian and Sasanian periods, the primary unit of Iranian society was the family, both the small (individual) family and the extended family (the patriarchal family of undivided brothers). Both were designated by the terms *dūtak* (literally "smoke") and *katak* ("house"); the latter appears in the compound words *katak-xvatāy*, "head of the family, paterfamilias", and *katak-bānūk*, "mistress of the house, materfamilias". The Iranian family consisted of a group of agnates limited to three or four generations, counting in descending order from the head of the family, who were bound together by a strict system of rights and obligations. Besides the bond of kinship, the members of the family were linked together by shared worship (in particular by the domestic altar and the cult of the souls of ancestors on the father's side) and religious rights, joint family

[1] *Mātakdān* A 39.11–17; 40.3–6. [2] *Ibid.* 39.8–11.
[3] *Mātakdān* 103.9–10.

property (in a large family, the undivided brothers had only theoretical "shares" – ideal parts – and were from the legal standpoint partners, *brāt-hambāγ*), and by common activity in production and consumption. The members of the family possessed unequal degrees of legal capacity and were linked together by relations of authority and subordination (on the one hand, *personae sui juris*, i.e. the head of the family and his grown-up sons and grandsons, and on the other the subordinate persons, the women and minors).

Besides the family there was a wider community of kinsmen, the agnatic group, to which the family belonged as one of its constituent units. The agnatic group, being the typical form of organization in ancient society, was the most important structure within the civic community, replacing the earlier clan and tribal system. The same form of organization is seen in the Greek *γένος*, *πάτρα*, *συγγένεια*, the Roman *gens*, *familia* (in the broad sense of this term, which in its narrow sense meant the family), *stirps*, and it also underlay the ancient Indian *gotra* (= *laukika gotra*). In Parthian and Sasanian Iran the agnatic group appears under the names of *nāf*, *tōxm*, *gōhr*.

In its simplest form the agnatic group included several dozen patriarchal families who all originated from one common ancestor on the father's side, three or more generations back from the living heads of these families. The members of such a community of agnates were connected by kinship, the order of which was established quite precisely since every surviving head of a family could have known as a child and a young man not only his own father, grandfather and great-grandfather but also their brothers and consequently all the lines of descent from them. Memory of kinship in the line of ascent might, of course, embrace an even larger number of generations.

Besides kinship, the members of the agnatic group were united by their common cult of the spirits of their dead ancestors (in the male line) and the "founder" of the group, and also by common religious ceremonies and festivals. Information on this subject is to be found in the Avesta, but evidence from the Sasanian epoch is no less eloquent. For example King Shāpūr I set up a special fund for the "souls and names" of his three ancestors – Ardashīr, Pāpak and Sāsān – and other kinsmen, so that services might be held, with offering of sacrifices and invocation of names, as we read in the great inscription by this king at the Ka'ba-yi Zardušt.

The following were also important features of the agnatic group:

(1) community of economic life, (2) solidarity in obligations, (3) community of political life, (4) territorial community.

Originally, real property, cattle, tools of production and economic implements in general were collectively owned by the agnatic group, and the families constituting this group were merely co-possessors of these things. This situation underwent a sharp change with the growth in the importance of the family as a social unit. But although the possessions apportioned out to a family eventually became that family's property, the agnatic group continued to retain latent rights over the possessions of all the families forming part of the group. The larger group also retained collective ownership of the common pastures, mills, irrigation works, farm buildings and so on, to which every family had access on the basis of co-partnership or common easement and by right of its membership in the agnatic group. Alienation of real property was allowed only within the group (i.e. to an agnate), the agreement of the agnates being required for its alienation outside the group. Community of economic life and community of worship were very closely bound up with solidarity in obligations. A man's agnatic status (his relative position in the kinship scale of his agnatic group) determined his degree of responsibility for the fulfilment of obligations undertaken by members of the group; it also determined the order of his responsibility of assuming guardianship over women and orphans and subsidiary or substitute successorship (*stūrīh*) to an agnate who died without leaving an heir within the family. As will be seen later, membership of the group and order of kinship might oblige a man (i.e. if it was his turn) to enter into levirate marriage or marriage with an epikleros, and the same factor also affected adoption.

By tradition, to which the Avesta already bears witness, males became adult at the age of fifteen. At fifteen a youth was dedicated to the cult, and this event was accompanied by his investiture with the sacred girdle and shirt. This solemn ceremony took place in the presence of all the agnates and marked the beginning of a new period in his life. He was regarded as having been "born again"[1] and this was indeed his "civic birth", which made him a person of full legal capacity (*tuvānīk*) with the right to participate in the civic (and religious) life of the community. Weddings and juridical acts were performed

[1] Among the Parsees this ceremony is called *naojot*, which comes from Pers. **nauzāδ* (from Iranian *navazāta – "born anew" or "new birth"). Cf. Old Ind. *dvija, dvijāti*, "second birth", "twice-born", the title accorded to members of the three primary estates.

before an assembly of the adult members of the agnatic group, which also regulated disputes and decided questions of common interest. The heads of families formed the council of the group, which also had its own head (Iran. *nāfapati-*: Arm. *nahapet*). The usual way in which persons from outside the group were received into it was by adrogation. Every agnatic group also constituted a territorial unit; although in Old and Middle Iranian documents there is no direct evidence for this view, it is strongly supported by comparison with other regions of the ancient world, as well as by present-day ethnographic material from Iran itself.

The limits of the agnatic circles which formed a social unit might vary. The nucleus of the agnatic community, its basic structure, consisted of the families whose heads had at least one common ancestor on the father's side, namely, a dead father, grandfather or great-grandfather. The members of families related in this way were near agnates to each other, and this circle corresponded to the Indian *sapiṇḍa* circle, the Greek *ἀγχιστεία*, and the Roman *agnatio* or *propinquitas*; the persons who belonged to it in Iran were called *hamnāfān*, *xvēšāvandān*, *āzātān* (in the Avesta: *xvaētav-*, *nabānazdišta-*). Though in India the *sapiṇḍa-* circle was exogamous, over a considerable area of ancient Iran it was endogamous. The principle of endogamy within the group – it was known by the Avestan word *xvaētvadaθa-* (literally "marriage between agnates") – found its extreme expression in incestuous marriages, which were given the highest religious sanction. Classical writers tell us of the widespread practice of this custom in Iran in Achaemenian times and later. A date formula in the first Avroman parchment mentions the marriage of the Parthian king with two of his compaternal sisters. This practice is especially well documented in texts of the Sasanian period, particularly in the Law-Book, where it appears as a standard custom. Examples of such marriages within the royal family are found in the great inscription of Shāpūr, which mentions Queen Dēnak, sister and wife of Ardashīr I, Queen Ātur-Anāhīt, daughter and wife of Shāpūr I, and others.

The wider agnatic group embraced several nuclei or segments with similar structure, and a constant process of segmentation led to the formation of new groups. Organization by agnatic groups was characteristic of all the civic estates. Membership of a community – urban or rural – was determined by one's membership of one of the agnatic groups which composed it, and a man's entry into a group, his status as an agnate, signified his possession of legal capacity as a citizen. For

this reason in Pahlavī legal terminology the word *āzāt*, which corresponds completely to the Latin *agnatus*, acquired the meaning of "a person of full legal capacity". But the nobility held a special position among the estates of Iran: together with civic legal capacity they also had privileges in the field of public (administrative) law. A man's entry into one of the agnatic groups of the noble estate meant, *ipso facto*, that he belonged to this privileged estate. In documents relating to the sphere of administrative-public law the word āzāt is therefore used in the sense of "member of an agnatic group of the nobility", "representative of the noble estate, nobleman". This use of the word was widespread.

It was status as an agnate in one of the noble groups that alone gave access to appointment to any state or court office of importance. Certain offices even became, with the passing of time, hereditary in a particular group, and that branch of the clan which had acquired preferential right to hold a given office could take the title of this office as the basis of its gentilitial name. Shāpūr's inscription, for instance, mentions such *nomina gentilicia* as *Bytḫšḳn* (*Bitaxšakān*), *Dyzptḳn* (*Dizpatakān*), *Sp'ḥpt* (*Spāhpat*), derived from the offices of *bitaxš*, *dizpat*, *spāhpat*. In general, the agnatic groups of the nobility played a large part in the life of the monarchical state and had their independent representation in the court protocol. The latter was embodied in special charters of ranks (*Gāhnāmak*), which were examined afresh and confirmed by each successor to the throne. The statute of ranks was based on two principles: first, that of "officiality" (*kārdārīh*), that is, the status of each office, and second, that of status of "nobility", in accordance with the ordinal position held by each agnatic group. Thus the position occupied by any person at the court, his rank there, was determined by the relative position indicated in the charter of rank either for his office (if he was an official) or for his agnatic group, his clan. The lists of officials and nobles given in the great inscription of Shāpūr, for whose "souls and commemoration" the king directed that services be held, were drawn up on the basis of official charters of rank of this kind, for Shāpūr's own court and for those of his predecessor Ardashīr I, and of Pāpak, the sub-king of Persis, and reflect these principles.[1]

All the agnatic groups of the nobility were represented in the charter

[1] We have the text of a charter of ranks (Arm. *Gahnamak*) of the Armenian court in the 5th century. A copy of such a charter, sealed with the seal of the Sasanian king, was kept in the king's chancellery at Ctesiphon. The text of the Armenian charter of ranks illustrates the same principle (precedence in dignity or in nobility).

of ranks and so, presumably, at the king's court. As a rule these groups were represented at court by their heads, who were called "*vazurgs*" (*nazrakān*), in contrast to the ordinary members of these groups, who were called āzāts.

The Sasanian Law-Book distinguishes strictly between the rights and obligations governed by membership of a family, that is, resulting from direct line of descent or from being a brother-partner (in a family of undivided brothers), and those which were founded on membership of a particular agnatic group and kinship-order within this organization. In the first case, when the basis of acccssion is (agnatic) kinship by direct or collateral (brother-partner) line, that is, membership of a family, this basis is rendered by the technical term *būtak* (literally, "real", "natural"), *būtakīh*. In the second case, when the basis of accession is membership of an agnatic group and relative position within this group, it is said to be settled by place in the agnatic line, via agnatic kinship (*nabānazdištīh*). The difference between these two consistcd not only in their rclative order (the second line of calling came into action only where the first was lacking) and their form but also, to a certain extent, in their effect: the first or "natural" accession applied *ipso jure* whereas accession by agnatic line took place by appointing the nearest agnate in the legal order and consequently entailed formal procedures of request, acceptance, etc. The procedure of appointment was carried out at a gathering of all the adult members (those of full legal capacity) of thc agnatic group.

3. FAMILY LAW

Marriage. Before the reception of Islam, Iranian society knew several types of lawful marriage, a diversity that was closely connected with the system of succession. The fundamental type of marriage, which was most "complete" legally and socially, was the *pātixšāyīh* marriage. It assumed entry by the wife into the husband's agnatic group and her passing under the guardianship of her husband (also, if he was alive, of her father-in-law), with the loss of her position in her previous family and complete release from the authority of her father or guardian: that is, it was a type of marriage *cum manu mariti*. Children born of a marriage of this type were regarded as legitimate, in possession of full rights, and as the successors of thcir fathcr (i.e. their mother's husband) in all lines of succession: name (*nāmburtārīh*), worship, inheritance of

property, inheritance of obligations, and also social position (in the agnatic group, the community, the social estate). In the Sasanian period, at least, the recording in writing of marriage contracts of this kind was a widespread practice. A model for such a document is found in a Pahlavī specimen marriage contract which has come down to us also in a Sogdian marriage contract from Mt Mugh (A.D. 710). Drawn up in the form of a bilateral agreement between the bridegroom and the father (or guardian) of the bride, who acted as her representative, this marriage contract contained a number of points. After the declaration by the bride's father or guardian, handing her over to the groom, and the latter's declaration accepting her, there followed a statement of the obligations undertaken by the bridegroom and on behalf of the bride by her father or guardian. Besides binding himself to treat his wife in accordance with her rank as mistress of the house, provide her with food and clothing, and recognize her children as his legitimate offspring and successors, the groom undertook to pay, in the event of his divorcing her, a fixed, guaranteed sum (*kāpēn*) of 3,000 drachms in silver. Payment of this sum was secured by the bridegroom on an equivalent amount of all his property, present and future.

The marriage was concluded at a meeting of agnates. A man could marry only when he had come of age (at fifteen) and undergone the ceremony of religious confirmation; possession of full legal capacity was a necessary condition for concluding a marriage contract. A woman could marry even though still a minor, but the law forbade giving her in marriage against her will. I have already had occasion to mention the widespread occurrence of marriage between agnates, including very close relatives. It was possible for a man to enter into full-right marriage with several women at the same time.

While a marriage lasted the wife was under the patriarchal (tutorial) and conjugal authority of her husband and was obliged to obey him: her status was described in legal documents as *framān-burtārīh*. Any infringement of this status (*atarsāčkāyīh*) by the wife was considered an offence, which entitled the husband to invoke a number of rights, including dissolution of the marriage, regardless of whether she agreed to this or not. The limits of a woman's legal capacity, as a person in wardship, depended on the will of her husband. He had a general right to all property acquired by his wife during their marriage, unless, of course, the wife possessed special rights arising from contractual agreements binding on her husband, such as, e.g., contracts of

partnership, transfer, etc. For this reason, when, for instance, a third party wished to convey something to a woman, a declaration from her husband was needed ("I do not want this"), renouncing his rights to take the thing in question for himself; or else, what had the same significance, a declaration by him that he agreed to his wife's acquiring the article. If the husband pronounced the formula "I want it", then the thing conveyed to his wife became his and not hers. For the same reason, all transfers by the husband to his wife and all contracts relating to real rights (= *iura in re*) concluded between them were annulled in the event of divorce (or offence by the wife) and the property was returned to the husband.

However, the law protected the property rights of a woman from arbitrary encroachment upon them by her husband, provided that these rights had been set down in legal form. The offence of "disobedience", on grounds of which a wife's property rights might be infringed, had to be formally proved and confirmed (the court issued a "certificate of disobedience", *dip ī pat atarsǎkāyīh*) and the wife had the right to approach the court independently in order to prove her innocence. The share of her father's property that a bride had received (her "daughter's share") and which she had brought as her dowry to her husband's home belonged to her as long as she lived, her husband being merely the usufructuary, and if she died childless, the dowry went back to her father's family.

Dissolution of such a marriage could take place on the initiative of either party, but ordinarily both had to agree to it; the wife's agreement was not required if she was childless or guilty of a misdemeanour. Dissolution might even be compulsory if the woman was called to succeed to a third party, one of her relatives (father, brother, grandfather, cousin, etc.); in that case it was also possible to transform the pātixšāyīh marriage into a different type of marriage, *sine manu mariti*. Like the marriage ceremony itself, the dissolution of a marriage was made public and official by the issue of a certificate of divorce (*bilišn-nāmak*), one of the main points in which was the transfer of guardianship over the woman. Usually when divorce occurred the woman took away with her, besides her dowry, her personal possessions and her kāpēn (*donatio propter nuptias*). After a husband's death, his widow by pātixšāyīh marriage had a right to a share (equal to a "son's" share, i.e., a full share) of his estate. Guardianship over her and other subordinate members of the family passed to an adult son (usually the

eldest) or, where there was no adult son, to the nearest agnate of the deceased husband.

If a man died childless, his widow (if she was capable of bearing children) had to enter into levirate marriage with his nearest agnate. This type of marriage was called by the Iranians *čakar*, *čakarīh* (cf. Ancient Indian *niyoga*). A widow who entered into this form of marriage continued to be the wife "with full rights" of her late husband and inherited a share in his property, while any children given her by her čakar-husband were regarded as the legitimate children and successors (and heirs) of her late husband, and not of their natural father.

When a man died without leaving a male successor or a widow capable of child-bearing, but left daughters (or sisters), it was necessary to call one of his daughters (usually the eldest, or an unmarried one) to be his successor; if there were no daughters, an unmarried sister was called. The daughter or sister thus called had no right to enter into pātixšāyīh marriage: she was obliged to enter into marriage *sine manu mariti* (like the čakarīh marriage described above) with an agnate of her father, and her position in the family and the agnatic group remained unaltered. This institution is fully comparable with the Greek epiclerate and the Ancient Indian *putrikā*, and children born of such a marriage to the epikleros-daughter were regarded as the legitimate children and successors of their maternal grandfather. If a daughter had already entered into full marriage when the situation arose that led to her being called to succeed her father, her full marriage was dissolved and replaced by another, *sine manu*, under which her husband was usually an agnate (preferably a close one) of her father, and he took on the rôle of her guardian until the maturity of any son born of this marriage, after which she passed into the guardianship of this son. The son of an epikleros who had become his mother's guardian could give her in marriage *cum manu mariti* to his own (natural) father. If the epikleros had no son, her father's epiclerate passed to her daughter, and the latter's son was regarded as the son and successor of his maternal great-grandfather. The čakarīh (levirate) marriage and the marriage of an epikleros-daughter were variants of the Iranian *stūr*-marriage described later on in connection with the Iranian system of succession.

The Iranians also knew other forms of marriage. For instance there was marriage concluded by the bride's own choice and without formal transfer of her by her kinsfolk, which corresponded to the Ancient

Indian marriage called *svayaṃvara*. Of great interest for its archaic character is marriage "for a definite period". The authority possessed by the head of a family and a husband gave him the right to hand over his wife – by a formal procedure and in response to a formal request – to another man belonging to his community, as a temporary wife for a definite period which was stipulated in a declaration. During her temporary marriage the woman continued to be under the guardianship of the man who had handed her over and to be his wife with full rights, and any children born of the temporary marriage belonged to him. For the period of this marriage the woman took away with her her personal possessions and income, which her temporary husband could use. When the agreed period came to its end she went back to her "permanent" husband. A father had a similar right to bestow his epikleros-daughter in temporary marriage. The Sasanian jurists regarded this form of marriage as an act of solidarity with a member of one's community which was sanctified as a religious duty.

Guardianship. Within a family, guardianship of the women and minors was the responsibility of the head of the family, the husband and father, while a widow and her children came under the guardianship of her grown-up son or of a brother-partner of her husband's. Should, however, the family be left without adult male members, the barriers of the family were lowered and an agnate was called to take up the task of guardian.

In the earliest epoch of Iranian society, two grounds or two procedures for such calling were known. The first – within the family – was entitled *būtak*, *būtakīh* ("natural"), and took place automatically, without formal request and appointment. The second, under which the basis for accession was the called person's membership of the same agnatic group and his kinship position in it, was invoked only if the first line had been exhausted. Entry into rights and duties on the basis of agnatic calling was attended by formal acts of request and appointment. This procedure took place at a meeting of all the adult members of the agnatic group within which and by decision of which the person called was being "appointed". For this reason a person called by the agnatic procedure (*pat rāh|hač kust ī nabānazdištīh*) was spoken of as *gumārtak*, literally, "appointed". Subsequently, with the extension of the rights of individuals, and especially of heads of families, and with the appearance of wills, a third basis for accession arose, namely, formal

institution or disposition. The head of a family could before his death nominate, in his will or in a formal declaration, the person who should become guardian of the family when he died. In making his choice he could ignore kinship-order and appoint a distant relative or even a fellow-citizen not related to him at all. A person called in this way (i.e. by formal disposition) was spoken of as *kartak*, "instituted". In order to enter into his rights he had to make a declaration agreeing to accept the disposition. If he declined it, the way was open for agnatic calling. There were certain differences in the rights of the person called, depending on the basis of his calling. Thus, functions entrusted to someone by agnatic calling (to an "appointed" person, gumārtak) could not be passed on to the successor of the person called, unlike functions received through "natural" (būtak) calling. The "appointed" person had no right to transfer his functions to anyone else. The "instituted"one (kartak) could not transmit his duties, but he could transfer them by way of a formal disposition. "Appointed" and "instituted" persons received regular remuneration (*tōšak*, "allowance") from the resources of the family on whose behalf they assumed their duties. In connection with these three lines of calling, it should be mentioned that we encounter them in other institutions as well – a guardian (*sardār*, *dūtak-sardār*) might be "natural", "appointed" or "instituted".

The agnates supervised the guardian's actions. If his behaviour proved unsatisfactory, inflicting losses on the family in wardship, a guardian of the second or third variety could be removed, and then the agnatic group appointed a fresh person. A guardian of any kind was obliged to make good within a twelvemonth any damage he had caused. One of the basic duties of a guardian was to administer the property of his wards, as far as possible without encroaching on the principal (*bun*). Wards could not take part in legal acts and procedures except jointly with their guardian; the latter could also act in their interests on his own, by natural right as their representative (*dastaβarīh*).

Succession. The men of ancient times were greatly concerned to safeguard their line of succession and to ensure maintenance by later generations of the domestic altar and the cult of the dead. It was regarded as extremely important that property accumulated by a family in the course of several generations, and providing the material basis both for carrying on religious ceremonies and services for the dead and for the activity of subsequent generations, should pass into the hands

of persons who were connected by name, blood and cult with the previous possessors. In this matter, religious consciousness was closely interwoven with social consciousness. It was not only the citizen of a Greek *polis* who was concerned "that his house should not be left without a name" (Isaeus, *Menecles*, 36), i.e., without a successor, since the absence of a successor would lead to ἐρημία τοῦ οἴκου, to "the extinction of the house", i.e., of the family; the magistrate-archon was also responsible for seeing to it that no house became extinct (Demosthenes, *Against Macartatus*, 75; Isaeus, *Apollodorus*, 30). Hence the important place accorded to succession in the law of every people of ancient times. It would, however, be no exaggeration to say that there was no people that went so far in this matter as the Iranians did, with their highly elaborate and strict, though complex, system of succession.

Iranian jurists drew a distinction between succession and inheritance. A person's successor might simultaneously be his heir (*xvāstakdār*), but it was also possible to be his successor without being heir to his property. Nor was every heir to the property of a given person simultaneously his successor: an heir might receive part of the dead man's estate through testamentary disposition, that is, through transfer and not through transmission (cf. *heres ex re certa*).

The succession to a person – the head of a family or an adult man – became open only at his death, whereas a man might become his father's heir (xvāstakdār) while his father was still alive. The Iranian system of succession (*aparmānd*) was divided into two categories. The first of these, called *aparmānd ī pat xvēšīh*, corresponded to necessary succession and inheritance (the *heredes sui* or *necessarii* of Roman law). It descended within the family, the first to be called being the children of the deceased born in full marriage, then his grandsons and great-grandsons. A person's successor, unlike his mere heir, inherited his personality – his name, his cult, his place in the agnatic group, the community and the social estate, and all his rights and duties, both active and passive. He began, so to speak, to represent the dead man, and this situation fully corresponded to the universal succession (*successio per universitatem*) well known from Roman law. Consequently, the successor was responsible for the dead man's debts *with all his property*, not merely with that which he had inherited from the dead man, as was the case with simple inheritance. In Iran each of the children born of one father in a pātixšayīh marriage became his universal successor, and primogeniture played no part in the matter. This affected sons mainly, since daughters,

when they married, ceased to be their father's successors, though they inherited a share in his property. Another characteristic feature was the observance of the rule of representation by generations: a grandson became successor to his father, and not to his grandfather, even if his father died while the latter was still alive and consequently had not taken up his succession. The successors of a dead man were also lawful heirs of his estate, acquiring it in individual shares (*bahr ī pat xvēšīh*) with the right and duty of transmitting it to their own successors. (This will be discussed in more detail below in connection with the law of property and rules of inheritance.)

The second category of succession, *aparmānd ī pat stūrīh*, came into play when the dead man had no male successor. This category, called *stūr*-successorship or stūr-ship (*stūrīh*), differed substantially from the one just described. The stūr-successor – he could also be defined as the subsidiary or substitute successor – incurred the duty of creating a succession to the dead man. A person, whether man or woman, who became a certain's man's stūr had to produce a son (*stūrīk pus*) who would be regarded as the legitimate son and heir of that man, his universal successor. For this reason only persons who were capable, or were thought to be capable, of producing children were called to stūr-ship. The stūr himself, though regarded as the (substitute) successor of the deceased, could not be his heir. The entire estate of the dead man "rested", so to speak, until the moment when the son given him by the stūr attained maturity and entered into his rights. In the Sasanian period, at least, an estate had to have a minimum value of 60 *satērs*, i.e. 240 drachms, for grounds to exist for etsablishing a stūr-ship to the deceased.

Depending on the basis for calling him, a stūr, like a guardian, could be of one of three kinds: "natural", "instituted" or "appointed". If the deceased left behind him a fairly young widow or a daughter, then this widow or this daughter (the eldest of his daughters, if there were several) had to take up her late husband's (or father's) succession and become his "natural" stūr. A widow, as her husband's čakar, entered into levirate marriage with an agnate of his, while a daughter who was called to her father's epiclerate entered into marriage *sine manu* with one of his agnates.

The čakar widow and epikleros-daughter were variants of stūr-successorship, and the son of the widow (*pus ī čakar*) or epikleros (*duxtdāt*, cf. Greek θυγατριδοῦς, Ancient Indian *putrikāputra*) were

variants of the *stūrik pus* created for the deceased by a substitute successor of the first category.

When a "natural" stūr had no male offspring, the duty of creating a succession for the deceased, his stūr-ship, passed to the stūr's daughter, and so on: within the limits of the "natural" line the duty of succession was subject to transmission, and there were actual cases when the grandson of a dead man's widow or the great-grandson of his daughter became his son and direct successor and heir. Within the framework of stūr-successorship the law of representation was transformed, and the order of representation by sequence of generations, which was characteristic of first-category successorship, had no application at all here. The son and successor provided by the stūr might be separated by several generations from the man who was this "son"'s legal father and whose heir he was, by a whole chain of epikleros-daughters (in practice these would be the legal father's daughter, grand-daughter, great-grand-daughter, etc.). This situation under Ancient Iranian law finds its reflection in the Frēdūn-cycle of the *Shāh-Nāma*; in the legend which Firdausi worked up, Frēdūn is separated from his successor Manūchihr by a chain of seven epikleros-daughters.

If, however, the deceased left neither widows nor daughters nor an "instituted" stūr, his agnatic group was obliged to establish a stūr-ship for him, registering all the dead man's estate and appointing a stūr from among his agnates, usually the one most closely related to him. Such an "appointed" stūr might be either a woman or a man, but a woman was preferred. The woman called to stūr-ship (the dead man's sister or a remoter relation) must enter his family as his stūr-successor, and come under the guardianship of an agnate of his; her marriage with the agnate must be *sine manu mariti*, and the children regarded as the dead man's children. If a man was called to the stūr-ship of the deceased, then any son subsequently born to him was regarded as the son of the deceased. Because the question of guardianship did not arise in the case of a man, and his assumption of stūr-ship did not entail any change of place in the family or agnatic group, a man, unlike a woman, could be stūr to several persons at the same time, with the duty of providing a son-successor to each of them. Stūr-ship "by appointment" was not capable of transmission in the family of the "appointed" stūr, nor could the latter transfer his stūr-ship to anyone else, and if he proved unable to give the deceased a son, then a fresh appointment was made (the next closest agnate to the deceased being chosen).

An "instituted" stūr was named by the deceased before his death, either in his will or by a special disposition. "Instituted" stūr-ship not only made it possible to avoid the procedure of agnatic calling but also even the "natural" line (widow, daughter). The head of a family who already had a son, or even several sons, born of a full-right marriage, had the right to set up his stūr-successorship himself, apportioning for this purpose a sum (not less than the established minimum of 60 satērs) out of his personally accumulated or acquired property (property which he had inherited passed entirely by the line of necessary inheritance). He could designate as his stūr any person from outside his family (though, as a rule, from the same community), but also his daughter (even if she had brothers) and even his son (one of this son's sons became son and heir of his grandfather and not of his father), and the stūr fund of property he established was acquired by his heir (stūrīk pus) as his personal share of the estate. An "instituted" stūr-ship was not passed on by inheritance to the successors of a stūr who could not cope with his task, but the stūr himself, during his life, could transfer his stūr-ship to another man – otherwise agnatic calling (stūr-ship "by appointment") came into force.

4. LAW OF PROPERTY

The fact that Sasanian jurists used the generalized conception "thing" (*xvāstak*, *(h)ēr*) to mean both an object of value and an object of certain rights, leaving aside the form and concrete qualities of the particular thing (including its animate or non-animate nature), testifies to the high level of property law that had been worked out by the Iranians. The reader will find many illustrations of this in the summary exposition of this branch of Iranian law which is offered here.

The definition "thing" may apply to a plot of land, a house, the entire mass of an inheritance, cattle, a slave: "things" are specified, as a rule, only in those instances when their specific properties are important for the legal relationship under consideration. Two aspects of a thing are distinguished: the basis (*bun*, *mātak*) and the fruits, or the income, increase, interest (*bar*, *vindišn*, *vaxt*, *vaxš*). It is possible to convey real rights in either of these aspects separately and there can be extremely complex cases of this being done.

Groups of things (as also a divisible thing) can be thought of as one undivided whole (*abaxt*) and real rights in them can be acquired by a single title. Thus, the entire corpus of an inheritance is treated in

Sasanian law as a single unit, one "thing", the rights of the heirs being apportioned in accordance with the "ideal parts" of each of them in this jointly-inherited "thing". Corporally independent things could also be united into one whole on account of their real or imagined lack of economic independence: a slave, draught animals or a canal could be regarded as belonging to a piece of land – *dastkart*, its economic "inventory" (cf. the Roman *fundus instructus*) – and, consequently, constitute together with the piece of land a single (complex) thing, to be acquired by a single legal title.

A cardinal point in the Iranian theory of real rights was the distinction drawn between *de facto* possession of a thing, or possession in general (*dārišn*), and a person's having a right, a title to a thing (*dastaβarīh*). Judicial protection of someone's possession of a thing against encroachments by other people (as also revindication of a thing possessed *de facto* by someone else) was based on proof of either the entitlement (*patixšāyīh*, *dastaβarīh*) of the possessor or the claims of the revindicator. One had to prove that a thing *belonged* (*xvēšīh*) to a given person on some grounds or other, by presenting the court with a written document or by means of witnesses' statements.

Titles and the real rights (= *iura in re*) conferred by them could be of different kinds; accordingly, there were several ways or forms of "owning" a thing (*čand aδvēnak ī xvēšīh*) that is, holding it lawfully.

Regardless of the character of the real rights themselves (that is, of the form in which the thing "belonged" to a subject), acquisition of it could be achieved in two main ways, which were clearly distinguished in Iranian law, namely, either by transmission (*pat aparmānd*), i.e., by right of inheritance, or by conveyance (*pat dāt*), i.e., by legal transfer of some real rights. Acquisition by transmission took place only within the framework of succession (see section 3), *ipso jure*, and, as the subsequent exposition will make clear, the real rights acquired thereby could be diverse, as in the case of conveyance: only the right of private property could not be transmitted. Though acquisition by conveyance was not subject to similar restrictions, it had its own special features.

In Sasanian Iran transfer of real right had reached the level of an abstract deed: neither the type of right being transferred nor the character of the conveyance and the stipulated conditions mattered here. In each individual instance of conveyance the person conveying mentioned, of course, both the variety of right that was being transferred and the conditions, since in the absence of these specifications the

effect of the conveyance was seen as transfer of the thing to the receiving person as an hereditary possession to be incorporated into his "portion". But there was a common form of conveyance of real rights, which was generalized and embraced a great variety of cases involving contracts of conveyance. Iranian conveyance thus shows a certain similarity to Roman *traditio* and was just as "bodiless": its object, the thing, does not affect it, and may not even be present at the actual proceedings. Moreover, it was possible to transfer to another person only the right of conveyance of a certain real right (in a specified thing or a defined value) to any third person. This flexible form was particularly employed in complicated credit and commercial operations, in which sphere it opened extensive possibilities for combination.

The conditions necessary for conveyance were: (*a*) the existence of two wills, the will of the conveyor to renounce, wholly or in part, his right to a thing in favour of the other person, and the will of the acquirer to receive this right; (*b*) the existence of right on the part of the conveyor to dispose of the thing, to the extent, at least, of alienating a certain real right, and on the part of the acquirer a certain real capacity (i.e. right to acquire).

In accordance with these conditions, a conveyance was made up of two acts: the first was a declaration by the conveyor in the presence of witnesses (it might be accompanied by the drawing-up of a written document); the second was a declaration made also publicly, by the acquirer (or his guardian, if the acquirer was a subordinate person) of his approval and acceptance of the transfer.[1] The first act did not by itself constitute a conveyance of a real right, which continued to belong to the conveyor, but by virtue of this act the acquirer was given the right to put forward a claim, unless the conveyor retracted his declaration within three days of making it. Transfer of real rights was effected only after the declaration of acceptance. There might be an interval of time between these two acts, and this could even be of considerable duration. The moment when the conveyance took effect could, of course, also depend on conditions stipulated by the conveyor. Thus a conveyance might take effect upon the death of the conveyor (so that it bore the character of a *mortis causa* disposition) or it might be made subject to some condition (resolutive or suspensive), etc.

The conveyor or the acquirer might be not only a physical person

[1] The legal terms for describing the first act were (*kāmak*) *guftan*, *kartan*, *paytākēnitan*, and for the second *sahišn guftan*, *kamak dōšitan*, *patigirišn paytākēnitan*.

(one or several) but also a juridical person, and the procedure was no different when a party to the transfer was of the latter kind. Thus, according to the Law-Book, when real rights to a piece of land or other property belonging to the king's demesne are being transferred, the declaration of conveyance has to be made by the official who is authorized to represent the juridical person (the royal demesne) in private contracts. It is stated in particular that a declaration of conveyance (*dāt paytāk kartan*) falls in the competence of the *ōstāndār* in charge of the department which administers the royal demesne in the given province.

If the object of conveyance was part of an indivisible thing, then, as a result of the conveyance, relations of co-partnership and co-ownership were established between the conveyor and the acquirer, just as when something was conveyed to several persons jointly. When property was conveyed into stūr possession (see above, section 3, on "instituted stūr-ship"), the conveyance formed part of the act of institution.

Varieties of real rights. Sasanian jurists distinguished the following varieties of real rights, or as they put it, "ways of owning a thing", *aδvēnak ī xvēšīh* (also "ways of holding, or possessing, a thing", *aδvēnak ī dāšt*):

1. *Hereditary possession of family property* (*xvāstakdārīh*; *bahr*; *bahr pat xvēšīh*; *vāspuhrakān*) (family ownership, or shares in this).[1] To this category also belonged rights in property obtained by conveyance as a hereditary portion. The characteristic feature of this category was the possessor's lack of the right to free alienation of the immovable property, of its "principal" (bun), which was subject to transmission to the necessary successor of the possessor, though the possessor had the right freely to dispose of and to acquire (as private property) the income arising from it. But hereditary property was available for any dealings which did not involve alienation of the principal (transfer of ownership rights) but merely transfer of the right of possession or exploitation (for example, various forms of rent, deposit, antichresis-security, etc.). Alienation of the "principal" was permissible only within the possessor's agnatic group (with the assent of his necessary heirs), and outside the agnatic group only with the group's assent (see also below, p. 665 under the heading "Family possessions and the law of inheritance").

[1] Not to be confused with possession through inheritance by private treaty, as with conditional possessions.

2. *Private property* (*handōxt ī xvēš*, literally "individually accumulated" or "acquired" property, cf. Greek, τὸ αὐτόκτητον, τὰ ἐπικτητά; also *xvēš*, *xvēšīh ī xvēš*). To this category belonged certain forms of movable property (clothing, small utensils, personal chattels) and privately-acquired income (from possessions of any category), as well as everything (including land) bought "for a price" (*pat arž*), or acquired by transfer as a gift (by the formula: "let this thing be thine!", *ēn xvāstak tō xvēš hēβ bavēt*) and privately owned. Things obtained by a person as his private property could be freely alienated by him. After his death, however, those privately owned things in his possession which he had not disposed of in his lifetime were made part of his estate and were acquired by his heir as a "portion" of his inheritance, and not as his private property. Common to this and the previous variety was the circumstance that possession by these titles could be subjected to tax but not to rent.

3. *Lease*. Two types of lease were known to Iranian law, lease for a fixed term and indefinite lease (emphyteusis). The leaseholder was bound to make annual payments of a fixed lease-charge, or rent to the owner (or basic possessor) of the leased thing, regardless of the income obtained from it. Retention by the person letting the property of his fundamental real right was also expressed in his undertaking an obligation (upon himself and his successor) to guarantee the leaseholder's rights of possession (and those of his successor) during the agreed period of the lease and to protect them from infringement by third parties; it was also expressed in the right to bring an action or to cancel the lease in the event of failure by the leaseholder to observe the conditions of the lease or of his causing damage to the leased property. According to the Law-Book, the object of a lease for a fixed term could be either immovable property or slaves. For the Parthian period, the Avroman parchments provide examples of emphyteutic lease documents, the parties to the transaction being private persons. Many economic documents from Parthian Nisā contain the term *'wpsyk* (cf. also *ptsyk*), which shows that the vineyards situated around Mihrdātkert, which were mostly royal foundations for pious purposes, had been let out on emphyteutic leases to private persons. The same expression is found in the Law-Book where it stands for a fixed rent paid by the emphyteuta to the owner or basic possessor of the

leaseholding. This document also mentions the practice of letting out parts of the royal demesne on hereditary emphyteutic lease and the fact that rent in such cases was paid into the king's treasury.

4–5. The Sasanian jurists included among the varieties of real rights also deposit, or more precisely, possession (usually without the right of exploitation) of a deposited thing (*ā)yāmdārīh* and possession of an antichresis-security (*graβkāndārīh*) – with right of usufruct (*bar-xvēš*) – on the part of a creditor. Like the right of possession of a leaseholder, including a hereditary (emphyteutic) leaseholder, these were derived real rights, arising from an agreement and linked with its conditions and period of effect.

6. *Conditional holdings*. Conditional possession of immovable property (land, farmsteads, etc.), granted in return for service, apparently already existed in the Achaemenian state. In any case we know of transfer in the Seleucid state of complexes of land and farm buildings on the royal demesne into conditional possession by persons charged with the performance of administrative and fiscal duties in the whole region of the king's demesne around the complex in question. This system of conditional possessors (of the type of Mnesimachos in the Laodice inscription in Asia Minor) on the king's demesne greatly facilitated the management of the latter. It may be seen (apparently as an Achaemenian-Seleucid heritage) in Hellenistic-Arsacid Armenia, where every holder of the king's land was called *ōstānīk* and the possession linked with his service was passed on, like the service itself, from father to son, becoming hereditary. The department for managing the royal lands in the Sasanian state, called *dīvān ī ōstāndārīh*, certainly inherited this system, which seems to have operated in Iran for not less than ten centuries.

The Law-Book mentions the allotment of land by the treasury, for lifetime possession on condition of military service, to the men enrolled in the "List of Horsemen" (*Asaβār-nipīk*). Such lands were called *pat ēmōčān*, literally, "for provision of outfit", and after the holder's death the land returned to the treasury. Similar transfers into conditional possession were made from the temple estates to the Zoroastrian clergy. In all instances of conditional possession, which often became hereditary, the fundamental real right belonged not to the holders of the land, but to the royal clan, the treasury or the temple or the Zoroastrian church. Being the owners of these properties they could, acting

as juridical persons through the officials who represented them, bring actions against the holders before a civil court, a practice reflected in the Law-Book.

7. *Private endowments for fixed purposes*, or *pat ruvan* ("for the soul") *pat ahravdāt* ("for pious purposes") foundations, were an institution highly characteristic of Iran and will be considered in more detail. They were "funds" established by individuals (through a formal appointment by means of a declaration in documentary form) from the property belonging to these persons. The specific purposes of the fund (usually of a pious nature) were determined by the founder himself and set forth in the foundation endowment deed. The fund or contribution thus set apart by the founder constituted a dedicated "principal", which could be neither encroached upon nor alienated.

The income or profit arising from this "principal" (there were also "profitless" foundations) was assigned in the following manner: part of it went for the upkeep of the "principal" (*uzēnak ī pat bun*), as expenditure for cultivation and depreciation charges (including payment to the trustees); part went for payment of taxes, if the property was subject to tax; and the rest went for the pious purposes indicated by the founder (such as, for example, the holding of services, distribution of alms, provision of meals for festivals, etc.), in strict accordance with his instructions. Anything that remained after meeting these necessary expenses, the entire "surplus", in fact, was fully at the disposal of the founder, while he lived, or of his heirs. These foundations took a variety of forms. They could be either immovable property which produced fruits or profit, in which case "the fruits were also regarded as dedicated", or immovable property which provided no income. The income from a piece of land assigned to a foundation was used for the purposes laid down by the founder, together with the profit (if it existed in the form of payments for use) from works of social utility such as canals, bridges or aqueducts, built at the expense of the founder. However, the building of such works as bridges or aqueducts was in itself an act of "social beneficence" and was imputed to the "piety" of the founder. An example of such a work, the ruins of which still exist, is the bridge built in the 5th century by Mihr-Narseh, *vazurg-framātar* of Iran, in the town of Gōr (now Fīrūzābād). The inscription still surviving on this bridge proclaims: "This bridge was built by order of Mihr-Narseh, *vazurg-framātar*, for his soul's sake (*ruwān ī xvēš rāδ*) and at his own

expense... Whoever has come on this road let him give a blessing to Mihr-Narseh and his sons for that he thus bridged this crossing."[1]

The purpose of an endowment might be the building of a fire-altar or a temple "for the salvation of the soul" of the founder himself or some other person designated by him. We learn from Ṭabarī that this same Mihr-Narseh founded four fire-temples, one of these, *Mihr Narsēyān*, being for his own soul, and the other three "for the souls" of his three sons. The seals of the priests of two of these temples have survived, and the temples themselves were discovered near Fīrūzābād and identified by E. Herzfeld and A. Godard.[2]

An earlier example of the endowment of altars and temples "for the soul" is found in the great inscription of Shāpūr I. After mentioning the foundation by Shāpūr of five fire-temples "for the souls and commemoration" of members of the royal family, the inscription goes on (lines 19–20): "And what we have conveyed to this Fire, and the order we have laid down (i.e., the specific conditions of this *pat ruvān* endowment – A.P.), are in like manner set forth in a (legal – A.P.) document. And out of the thousand lambs which are by right due to us from the surplus (*trkpyšn*),[3] and which we have ceded ("conveyed") to these Fire-temples, we make the following disposition: let an offering be made for our soul each day ("day by day") of one lamb, one *grīv* and eight *ḫwpn* of corn and four *p's* of wine." It follows from this, first, that the foundation of the Fire-temples was accompanied by the conveyance to it of property, in particular, holdings of land and cattle; second, that Shāpūr I's endowment was made in conformity with the customs known to us from the Law-Book and by way of a formal deed of private law, with the drawing up of a legal document in which were recorded all the conditions and orders of the act of institution, this document[4] being

[1] See W. B. Henning, "The Inscription of Firuzabad", *Asia Major* IV (1954), pp. 98–102.

[2] J. Harmatta, "Die sassanidischen Siegelinschriften", *AAntASH* XII (1964), pp. 229–230; E. Herzfeld, "Reisebericht", *ZDMG* LXXX (1926), p. 256; *idem*, *Archaeological History of Iran* (London, 1935), pp. 91 ff.; A. Godard, "Les quatres čahār-ṭāqs de la vallée de Djerrè", *Āthār-e Irān* III (1938), pp. 169–73.

[3] In the inscription, *'bdyny YHW-t* "ought (to be due) by right". The precise meaning of this expression has been established with the help of an Ancient-Armenian copy; Armenian *awrēn* (from Parthian αβδēn), together with a conjugated form of the verb "to be", cf. Armenian *awrēn ē*. Cf. also what has been said earlier about the usual ways in which income arising from the endowment was distributed.

[4] In the Parthian version *ptyḫštr*, in the Middle-Persian *p'tḫštr* = *patixšahr* (cf. *patšir*, borrowed during the Sasanian period by Armenian), which literally means "a title, a document giving title". In the Greek version the Iranian term is rendered by an expression which exactly corresponds to it: ἔνγραφος τοῦ ἀσφαλίσματος τῆς τειμῆς "a title-document (a certificate) on the transfer (of property) for a religious purpose". An oblique reference to

mentioned in the inscription. The importance of the property ("the principal") transferred by Shāpūr to the foundation may be inferred from the fact that a thousand lambs might constitute one fixed part of that surplus of the income which normally went to the founder; this part of the surplus due to him after the necessary expenses had been met was assigned by Shāpūr to a special (additional) fund for the maintenance of services and offerings.

Parthian potsherds from Nisā testify to the existence of this institution in the Parthian period. A considerable proportion of the vineyards and other holdings situated round Mihrdātkert were endowments for a fixed purpose, dedicated to the upkeep of services for the repose of the souls of the Arsacid kings: Mithradates (the endowment called *Mihrdātakān*), Gotarzes (*Gotarzakān*), Priapatius (*Friyapatikān*), Artabanus (*Artabānukān*), and so on. As mentioned earlier, the cultivation of at least part of these vineyards was carried on by vinegrowers (*razkār*, *razpān*) who had received holdings on emphyteutic lease and were obliged to pay (to the royal treasury, since the endowments were royal ones) a fixed annuity in kind (*'wpsyk*, *ptsyk* in the Nisā documents).

Besides endowments "for the soul" there were also money investments (*nihātak*) for the performance of rites and services. This was likewise a donation for a purpose, with obligatory effect, but of a different type.

The endowment might be entirely separated from the property of the founder's family. Thus, a fire-altar or an endowment-holding might be transferred to a great temple, while a bridge or a road might be transferred to a public or government department. Equally typical, however, was the retention of the "endowment" as the property of the founder's family, though as a completely distinct part of it, with the use of it strictly governed by the purpose of its dedication, in accordance with the régime set down for it, and without any right to alienate it or to alter its legal status. Trusteeship of the endowment was usually kept within the family of the founder (even when it was separated from the family property) but the founder had the right to transfer the trusteeship to any other person, outside his family, or to the priests of the temple. In particular, the inscription of the priest Kartīr tells us that trusteeship of all the fixed-purpose endowments made by Shāpūr was

documents defining this and other endowments by Shāpūr is contained in the inscription of the priest Kartīr (*KZ*), which shows, in particular, that the originals of these documents were deposited in a building specially constructed for the purpose (*bun-xānak*).

assigned by this king to Kartīr (with the right to transmit this trusteeship to his personal successors).

In Sasanian Iran, general supervision of these institutions was undertaken by a special department or secretariat, *dīvān ī kartakān* (literally, "office for religious institutions"), which not only registered the endowments and took charge of the documents relating to each of them, but might also act as trustee. According to the Law-Book, supervision of endowments "for the soul" was part of the prerogative of the *moγān andarzpat*. In the list of Sasanian dignitaries given by al-Khwārazmī mention is also made of the *ruwānakān dipīr*, apparently an official with authority throughout the empire.

The *pat ruwān* institution was taken over, in a modified form, by the Manicheans, who also called it *ruwānagān*,[1] but this time-honoured Iranian institution[2] was even more extensively adopted by the Arabs and Islam. There can now be no doubt of the Iranian origin of the Muslim *waqf*. The resemblance in legal régime between Iranian endowments for a fixed purpose and waqf properties is striking. There is the same non-consumable "principal", the income from which is dedicated to pious or beneficent purposes; the same way of distributing the income; the same retention of the obligation to pay the taxes imposed on the property before the act of institution. The conditions and forms of the foundation are the same, including the irrevocability of the act of institution. Similar too is the way of administering waqf properties through trustees (*nāẓir*, *mutawallī*), nominated (at least in the case of the first trustee) by the founder (*wāqif*) himself. Finally, there are the same two forms we have seen in the *pat ruwān* institution, namely, *waqf khairī*, that is, private foundations of a public character – mosques,

[1] In *Acta Archelai* 16.11 this term is rendered by the Greek εὐσέβεια, "piety" (cf. Iranian *ahravdāt*). Some information about this is contained in Middle-Persian Manichean documents, in one of which it is said, for example: "and through this their (investment) for the soul, these hearers are united ('merged') with purifying religion and find a common portion with the elect (*electi*)". In the Manichaean monasteries there was a person, *ruwānagān spāsag*, whose task it was to look after the endowments dedicated by the "hearers"; see Andreas and Henning, "Mitteliranische Manichaica II", *SPAW* 1933, p. 317; E. Benveniste, "Un titre iranien manichéen en transcription chinoise", *Mélanges Raymonde Linossier* I (Paris, 1932), pp. 155–8.

[2] The correlative institution in ancient India was called *utsarga*. In India, too, "endowments" took different forms; besides foundations for socially useful purposes (*pūrtá*), which provided for the construction of wells, reservoirs, shelters and so on, "endowments" were also dedicated to the restoration of temples and the setting up in them of images of the gods (*pratiṣṭhā*). In the Smṛtis we find mention of rent (*nibandha*) regularly paid for a specified purpose. A piece of "endowment" land is in later documents called *devasthān*, "land belonging to God". There is epigraphic evidence that such endowments were set up by King Aśoka.

schools, bridges and the like – and *waqf ahlī*, that is, endowments not separated from the family property. Such a coincidence in both real and formal aspects can hardly be accidental. Ḥanafī tradition assigns the appearance of the waqf and its spread among the Arabs to the end of the first century after the Prophet's death, that is, to the very period when Iran was conquered by the Arabs. It is not surprising, therefore, that al-Khwārazmī translates the Sasanian title *ruwānakān dipīr* into Arabic as *kitābat al-awqāf*.

Family possessions and the law of inheritance. The mass of possessions, movable and immovable, at the disposal of a family consisted of a number of things subject to different legal régimes. In ancient Iran it comprised the following elements:

(i) the property owned by the family which had been inherited by the head of the family by right of succession;

(ii) the private property of the head of the family and of the members of the family;

(iii) the possessions held by the head of the family (or by members of the family) through the right arising from private contracts (leases and the like), and properties in conditional possession (granted "for service", e.g., a "horseman's allotment");

(iv) the surplus income from a private endowment for a fixed purpose founded by the head of the family or his predecessors;

(v) a woman's inherited portion brought by her as dowry from her father's home to her husband's;

(vi) stūr-property (through the right of usufruct enjoyed by a stūr who was a member of this family).

The whole of the wealth concentrated in a family fell into two main categories, namely: (*a*) *aparmānd ī pitarān*, "inherited from ancestors"; (*b*) *handōxt ī xvēš*, "accumulated personally". This distinction between *aparmānd* and *handōxt* was very important in relation to the right of disposition. It fully coincided with the distinction in Greek law between property "inherited from ancestors" (*τὰ πατρῷα, τὰ παππῷα*) and property "acquired" (*τὰ αὐτόκτητα, τὰ ἐπίκτητα*). Any property the right to which was based on contract and was limited by the terms of the contract fell, of course, outside both these categories, as did also endowments for a fixed purpose. But the surplus income from any property might pass into the category of "personally accumulated" property.

The aparmānd category included the head of the family's own share of the inheritance left by his father, his "son's portion" (*bahr ī pusīh*; *bahr ī xvēš*; *vāspuhrakān*). It also included the portion brought by his wife (her "daughter's portion", *bahr ī duxtīh*; *vāspuhrakān*) and, if the mother of the head of the family was alive, her "widow's portion" (*bahr ī katak-bānūkīh*) of the inheritance left by her deceased husband, as well as the portion of any unmarried sister. The "principal" of all this property was not alienable (not freely, at any rate) and was subject to transmission to the successors of the head of the family. The successor had the right to dispose freely only of the income or increase that came to him, and, of course, of consumable things. A woman disposed of income if she was either in co-partnership with her husband or brother or if she had been specially accorded this right. Undoubtedly the head of the family also had the right to make various forms of investment and improvements on this property, and the right to exploit it (by granting it out on lease). Aparmānd property was family property and belonged, in principle, to the family, its past, present and future generations. Each living generation was in the position of a holder obliged to preserve what it had inherited and pass it on to the next generation of the family.

Any income left over after payment of taxes and all necessary expenses (maintenance of the family, productive expenditure) could be disposed of by the head of the family at his discretion, like that which he had "personally accumulated". To the category of "acquired" property, besides the unconsumed part of the income from the inherited property, belonged property acquired by the head of the family or members of it "for a price", or by transfer as gifts, and also as personal wages (including payments for guardianship over other families, for stūr-ship, and for trusteeship over fixed-purpose endowments). Like aparmānd property, personal property could take the form of any valuable object: a piece of land, a house, a slave, money. But this was private property and the person who owned it could dispose of it at his own discretion; it was available for any kind of transaction. Foundations for fixed purposes were endowed from it, and a man who already had children could establish an additional succession (*stūr ī kartak*) out of his private means. From his private resources the head of the family could, while living, make transfers of "portions" to his children, in legal form. Later, when the children inherited, these transfers were added to their share of the inheritance. Here the strictly personal

character of this real right should be stressed: a thing that was privately owned could be disposed of only by its owner or by a person specially empowered by him for this purpose and acting on his instructions. The head of a family could, by virtue of his patriarchal authority, dispose of the income from the private possessions of those subordinate to him, but had no right to alienate or encroach upon their "principal". When an owner of property died without having made disposition of his private property, this property was incorporated in his inheritance and acquired by his successors as "aparmānd" property, that is, family property subject to transmission.[1] In other words, the right of private property was not transmissible. As a result, the fund of family property tended to grow by the addition to it of undisposed personal (= private) property. The Iranian rule of incorporation might contribute to this growth in still another way. If a father made substantial gift-transfers to his children out of his private property during his lifetime, then, in order to avoid undue inequality in inheritance shares, a gift like this was taken into account when the total amount of his estate was distributed among his successors: it had to be included in the portion inherited by the recipient (*pat bahr hangārišn*).

These circumstances – to which may be added the law of annexation, to be described later – made it possible to maintain a general stability in the amount of family property in spite of such disruptive factors as the development of private property and the growth of commodity and money relations, not to speak of the steady break-up of family property that took place with each new generation. Though family property, being a variety of collective property, was in principle inalienable, in practice this could not apply absolutely. Family property could not only be hypothecated but could also be used to pay debts, that is, it could be alienated in emergencies. Moreover, the desire of a hereditary possessor to alienate it, despite the traditional ban on this, could be fulfilled if he obtained the consent of all the potential inheritors: the necessary heirs of the possessor, his co-heirs and his agnates.[2] On the other hand, the feature of private property mentioned above was due in its turn to the fact that, despite the considerable relative weight of this form of property in Sasanian Iran, it was family property that was predominant in the social and economic spheres, and not private

[1] In fact this applied mainly to immovables, farm implements and the like, and not to more perishable things such as clothing, small utensils, etc.

[2] Alienation of *aparmānd* property, though at first allowed only within the possessor's agnatic group, later became possible also within his civic community.

property. For this reason, Sasanian jurists were unable to make that clearcut distinction between real right of property (private, collective and public) and real right of possession (of any title) which appeared in the legal thinking of men living closer to our own day. What was important for them was the question of title: around this axis they constructed their entire classification of real rights.

When the head of the family died, the entire amount of property he left behind him (aparmānd and acquired property not set apart in a special fund were merged in this total amount of property) was available for transmission to his successors. In accordance with the two categories of successors (see section 3), inheritance could be acquired in one of two ways: the necessary heirs of the dead man obtained inheritance in the form of their "personal" portions (*pat bahr ī xvēš/xvēšīh*),[1] or there was substitutive successorship in the form of stūr-possession (*pat stūrīh*). The difference between these forms of succession has already been pointed out and also the fact that the sons, being their father's necessary heirs, were also, each and every one of them, his universal successors by law. In theory, each of several sons reproduced the personality of his father and took all that he left, but he was limited in his claims by the existence of co-heirs, namely, his brothers, whose position and rights were equal to his own. Moreover in quite early times (at any rate, within the period under review) the women of the family, that is the widow (or widows) and daughters of the full-right marriage had come into a share of the inheritance. All heirs took the inheritance jointly, in "ideal" shares allotted as follows: a "son's" share (*bahr ī pusīh*), as also a "widow's" (*bahr ī katak bānūkīh*), was twice as big as a "daughter's" (*bahr ī duxtīh*). This rule of inheritance was followed whether or not partition (*baxtīkīh*) of the property among the co-heirs took place. If there was no partition, then the co-heirs were legally co-possessors and co-partners – with the right, of course, to leave the co-partnership if they so wished, taking their personal portion. Here, however, there was a difference between male and female successors. A woman would obtain her inheritance and take it away only jointly with another co-heir, a son or brother – as the Sasanian jurists put it, *pat rāh ī dō-kasīh*, literally, "by way of partnership". A daughter who got married received her "daughter's" portion as her dowry, which she then brought into her husband's family.

Thus the rules by which family property was transmitted took into account the interests of all the necessary heirs, all the sons receiving

[1] Cf. also τὸ ἴδιον μέρος in Avroman I.

equal shares; in Iran there was no right of primogeniture in matters of inheritance.[1] And regardless of whether or not a son separated from the other co-heirs, his share of his father's estate was safeguarded against any infringement by other persons, including claims by his brothers. He transferred it to his personal successor, who carried on his "name" and cult, for his share fell to him *pat yāvētānīk*, for "eternal" continuation of his "line".

The collective character of family property and the unity of its inheritance found expression in the latent right enjoyed by all the successors to inherit from each other. An example of this was the right to annex the share of a dead person who had left no successor (son or stūr) to the share of his co-heir, as also a brother's right to annex to his share of the inheritance the share of his unmarried sister, in the event of her death.

The régime of family property and its inheritance which I have described was common to all strata of Iranian society. It applied in the king's family no less than in others. All members of that family who were necessary heirs obtained their personal share of the total possessions of the royal household (*ōstān*). The reigning monarch also received his *vāspuhrakān*, his "son's share", representing his personal demesne, the receipts from which – taxes, rents and the like – formed his private fund, his "acquired property" (*handōxt ī xvēš*). Since the possessions of the royal household, scattered all over the country, were extensive, administration of the ōstān was undertaken by a special department called *dīvān ī ōstāndārīh*. The King's personal demesne was also quite large and it had its own administration. A dignitary invested with executive authority within this demesne, *andarzpat ī vāspuhrakān*, is mentioned in the sources together with a finance official, *hamārkar ī vāspuhrakān*.

5. THE LAW OF OBLIGATIONS

Binding agreements are mentioned as early as the Avesta, where, along with general expressions rendering the concept "treaty, agreement" (Av. *miθra-*; *urvaiti-*), the categories of such agreements are also set forth.[2] But no law of obligations in the strict sense of the word is to be

[1] Primogeniture was recognized, however, in the order of calling, for example, to guardianship or to trusteeship of a fixed-purpose endowment.

[2] Vendidād IV.2–13. This classification is based on two principles: for the first two types of agreement it is the form in which they are concluded (Av. *vačahina-* "verbal agreement"; Av. *zastā. maršta-* "agreement sealed by a handshake"), for the other four it is the size of the value of the security given (*e.g.* Av. *pasu. maza-*, *staorō. maza-*, agreements in which the security given was equal to the value of one sheep or one ox, respectively).

found in the Avesta. Conclusion of agreements and supervision of their fulfilment came within the sphere of customary law. Breach of an agreed obligation was regarded as a religious offence, and the fear of divine wrath, and also reluctance to forfeit the security given or stipulated and, especially, the collective responsibility of agnates, helped to ensure the fulfilment of an obligation.

We find a different situation in the Iran of Parthian and Sasanian times. Here an authentic and very highly developed law of obligations emerges. Its characteristic features are, first, the fixing of the agreement in written form, in a contractual document; second, the existence of different ways of ensuring the fulfilment of obligations; third, judicial protection of the interests of the parties, since every formal agreement gave the parties to it the right to bring an action. With the development of economic life the sphere of application of agreements expanded immeasurably.

The extensive practice of giving written form to agreements (*pašt*; *patmān*) led to the working out of precise formulas for contractual documents of different kinds. Usually the contractual document was prepared in several copies (never less than two), so that each party received a copy of his own, and the document was sealed with a clay seal.[1] Also widespread (especially where transactions in immovable property were concerned) was the registration of agreements with the courts or departmental secretariats, and the preservation in departmental archives of a copy of every private document issued by the department in question. It is not surprising, therefore, that besides terms for the concepts "document" (e.g., *dip*, *nāmak*, *nipīk*, *nipištak*, *vičīr*, *fravartak*), "original" (*bun*, *mātak*) and "copy" (*pačēn*, *hampačēn*), there were also "specialized" terms (*patixšahr*, "document of title"; *āzāt-nāmak*, "manumission document"; *hilišn-nāmak*, "divorce document", and so on). Though the sphere of application of the verbal contract diminished to the point where it was mainly confined to transactions in movable property, elements of this ancient form survived in the ceremony of concluding an agreement which preceded the preparation of the written document. The contracting parties made declarations in the presence of witnesses and before a magistrate, repeating certain formulae three times over. In the clauses of the documents themselves traces of the influence of the verbal contract are noticeable.

[1] A document which lacked a seal was regarded as invalid. In the Law-Book a document is defined as the unity of the written text and the seal ("clay").

One method of ensuring the fulfilment of obligations was the fine (*tāvān*) stipulated in the event of non-fulfilment. Such a penal clause appears, for example, in two of the Avroman parchments (a fine of 200 drachms is to be paid to the injured party and the same amount is to go to the king's treasury), and a similar practice is mentioned in the Law-Book. Another method of guarantee attested by the Law-Book was the stipulation of smart-money.

Stipulations regarding fines and smart-money, when recorded in the contractual document, gave the right to make a claim before the court in the event of non-fulfilment by one of the parties of the obligation itself or of the conditions stipulated in the agreement, for example, performance within a specified period of time. A widely used method of guaranteeing performance (especially in credit agreements) was the appointment of one or more sureties (*pāyandān*). The appointing of sureties, or warranty, took place by a special verbal agreement, concluded separately from the agreement creating the promissory obligation, fulfilment of which the warrantor undertook to guarantee. He made a declaration to the creditor, in the presence of not fewer than three witnesses, the formula for which, "I am the warrantor of such-and-such a person in respect of this thing (i.e., the debt)", is given in the Law-Book. His rôle as warrantor was recorded in the document which embodied the main agreement. A warranty agreement created a personal liability to the creditor by the warrantor to settle the debt in full if the contractor of the main agreement (the debtor) should fail to do so within the period laid down. On the other hand, it gave the warrantor, after settling the debt, the right of regress to the debtor, who was bound to make good the expenditure incurred by the warrantor.

If, however, there were several warrantors for one debt, who declared themselves co-warrantors, they were regarded as persons with joint liability, and the creditor could demand full payment of the debt from any of them, since in principle each of the co-warrantors (*ham-pāyandān*) underwrote the credit agreement as a whole (he had, of course, right of regress to the other co-warrantors). Joint liability, or correality – in Middle-Persian it was called *hamxvāstakīh* – appeared also in the case of a credit agreement concluded by several persons so that their debt was common to them all (joint debtors). Such correal debtors could conclude a concurrent agreement for a co-warranty; the Law-Book cites an interesting example of "cross-paired" co-warranty.

Joint liability resulted also from co-partnership contracts (*hambāyīh*). This type of agreement might be made for a variety of purposes. It was

often concluded between merchants (commercial partnership), and the Law-Book also mentions co-partnership formed in order to construct irrigation canals. Agreements on co-warranty, correal debt and co-partnership were united by the Sasanian jurists in a single group, the typical principle of which was joint liability (or correality). Co-partnership relations could also exist without special liability agreements. The undivided family of brothers is an example of such a natural co-partnership.

The Pahlavī legal texts also contain information about other sorts of contract. Among these are the exchange agreement (*guharīk*, *guharēn*), in which distinction is made between equivalent exchange (*guharēn ī rāst*) and non-equivalent exchange; the latter was permitted only if the advantage obtained by one of the parties did not exceed one-quarter of the value of the thing exchanged. Only a few articles in the Law-Book are devoted to the subject of barter, but these contain valuable information about this very ancient form of transaction. It was apparently accorded quite an important place in the legal nasks of the Avesta, as may be inferred from a special chapter in the *Dēnkart*, *Dar ī guharīkistān*, "chapter about exchange".[1] The object of barter mentioned both in the Law-Book and in the *Dēnkart* is also characteristic of this type of exchange – namely, cattle, which evidently became the standard example used in legal texts. An exchange agreement could arise also as the alternative solution in a contract concluded for purchase and sale (*xrītakīh*; *pat vahāk dāt/frōxt*). The object of sale might be any object of value. What mattered for the transaction to be valid was not the nature of the object sold but the seller's possession of real right to it, the unconditional right to alienate it; it was forbidden, for instance, to sell a Zoroastrian slave to a non-Zoroastrian: such a transaction was regarded as illegal and equivalent to the crime of larceny. The purchaser must have a corresponding legal capacity for liability and acquisition. Thus, a woman could not be the purchaser of immovable property, nor could she acquire, as her own property, more than two slaves.

The sale of immovable property, entailing as it did the transfer of real right to this property, was usually recorded in writing. But an agreement for an emphyteutic lease was clothed in the form of a sale contract, and only the proviso about the liability of the "purchaser" and his successors to cultivate the holding and pay a fixed rent reveals the true nature of the transaction.

[1] *Dēnkart*, ed. Madan, 737.6–738.14.

The transfer of real right to the purchaser took place immediately on his payment of the purchase price, though physical delivery of the thing might not be made till later. The seller was obliged to keep safe (*druvist dāštan*) the thing sold until it was delivered to the buyer, together with any income arising from it since the day the transaction was concluded; otherwise, the purchaser had the right to demand indemnification for the loss. Any lengthy retention of the purchased thing by the seller was usually made the subject of a deposit agreement.

Sale might take place on a credit basis, but in that case still another type of agreement applied, namely, the credit transaction or loan contract. We have detailed information about the loan contract (*ǎpām*).[1] Besides the stipulated fine and the warranty this type of agreement had other special means of protecting the creditor's interests. These were the conclusion of a subsidiary contract for establishing a security (usually higher in value than the loan) out of the debtor's property and the provision often stipulated in credit contracts that an interest-free loan should become interest-bearing if the debt is not paid off in the agreed time. Moreover a written agreement provided a legal safeguard for the creditor's possession of the pledge and also served as a promissory note. For this reason the copy of the contract held by the creditor was returnable to the debtor as soon as he had paid off his debt.

Loans were made either without interest (*a-vaxt*) or at interest (*pat vaxš*), the standard rate of interest in Iran being, to judge from "The Lawbook of Yišō'boxt", 20 per cent per annum. However, the total amount of interest accumulated on a loan was not allowed to exceed the capital lent; the same provision existed in Indian law. In the case of an interest-free loan, the security (*graβ,graβakān*) took the form either of pledge (= deposit-security), or of hypothec, and there was also anti-chresis-security usual with interest-bearing loans. In the latter case the object serving as security was either a piece of land or a slave. The yield of the land was appropriated by the creditor (after deduction of tax or rent) and represented the interest on the loan; the income from exploitation of the slave left by the debtor with the creditor was also accounted as interest. In one of the cases quoted in the Law-Book the creditor hired out such a slave to a third person, taking the rent paid by the hirer as

[1] The term *ǎpām* was doubtless originally connected with the loan of a certain thing (Roman *commodatum*), a form of obligation more ancient than the loan of money (Roman *mutuum*). With the appearance of the money loan, however, the term became the general designation for any kind of loan or credit agreement and the debt (payment) liability arising from this.

interest reckoned on the money he had lent to the owner of the slave. Another very interesting case is represented in parchment No. 10 from Dura-Europos, a document from the Parthian period which contains a contract concluded between the Parthian nobleman Manes, son of Phraates, and a peasant named Barlās from the village of Paliga, near Dura-Europos. In return for a loan at interest received from the Parthian the peasant undertook to pay interest in the form of "service as a slave" (δουλικᾶς χρείας), that is, he gave himself as antichresis-security, while all the property belonging to this peasant was hypothecated, and in the event of his failure to redeem the debt it would pass to the creditor.

There was no line or barrier between the two types of loan; an interest-free loan could be transformed into a loan at interest if the debtor failed to discharge his debt within the stipulated time (*pat zamān ī nāmčišt*), or for other reasons. Such a transformation was often provided for in the contract itself.[1]

It is not possible to treat here in detail the very carefully worked-out Iranian law on security. Suffice it to mention that security appears not only in loan contracts but also in agreements of other kinds. Thus, kāpēn, the *donatio propter nuptias* stipulated in a marriage contract is nothing but a special form of security, and in one of the cases cited in the Law-Book a hypothec over the profits of one partner serves as security for regress to him by the other partner in the event of the latter's incurring expense on behalf of their joint enterprise.

In Sasanian Iran there was yet another type of loan, which we know about from "The Law-Book of Yišō'boxt" (V, 8, §§1–3). In the Syriac translation it is called "a loan at risk". This extremely interesting type of contract is analogous to the "maritime loan" or "sea-loan" (ναυτικὸν δάνεισμα) known to us from Greek law, and the *foenus nauticum* or *pecunia trajecticia* of Roman law. Lending money to finance sea-borne and caravan trade was highly developed in countries where there was an active commerce entailing the transportation of goods over long

[1] Cf., for example, the agreement quoted in *Mātakdān* 38.13–17, for a loan without interest, under which the timely repayment of the debt to the creditor was secured on a hypothec-security taking the form of a piece of land together with a slave. In the event of his not settling the debt on time the debtor must transfer ownership of the piece of land and the slave to the creditor. The article envisages the possible case of damage to the value of the security through the death of the slave. In that event the creditor was given the right to choose between receiving ownership of the piece of land (the debt would thus be liquidated) or taking it as antichresis-security (until the debtor should have paid off his debt); the latter option was equivalent to transforming the interest-free loan into a loan at interest.

distances. The maritime (or overland-trade) loan was called into being by the absence in ancient times of insurance for commercial ventures involving extraordinary risk and large initial capital outlay.

In this type of transaction the debtor was a merchant who needed money to buy goods and transport them to a place where he could sell them at a profit, or a shipmaster or a caravaneer, who carried on trading operations which involed supplying goods to a distant place and who borrowed money in order to buy them (or received the goods themselves on credit). For loans of this kind the goods carried served as security (their value was usually a great deal higher than the amount of the loan). Owing to the hazards of travel in those days, danger of robbery, shipwreck etc., the security might perish *en route* through no fault of the debtor, in which case he was released from his debt. Thus, the creditor took a risk, but only for the period when the goods were in transit, since the debtor was responsible for any damage incurred after the goods arrived at the place of destination. Such contracts usually included a proviso "until arrival at the island of X", or "until arrival at the place Y".

Since the creditor ran so serious a risk of losing all the capital he had advanced, he was able to set, as a premium for the risk, a very high rate of interest. Both principal and interest were payable upon the goods reaching their destination safely. Like the Greek maritime loan (and its Roman equivalent – the Romans borrowed this practice from the Greeks), Iranian agreements of this type might be complicated. For example, the contract might cover not only the outward journey, but also the return journey with a fresh consignment of goods purchased by the money realized from the sale of the first consignment at its destination. The interest on loans of this kind was not, strictly speaking, interest at all, since it did not grow on the capital advanced while this was being used. Essentially it was a share in the profits from a successful joint trading operation by the creditor and the debtor. We learn from "The Law-Book of Yišō'boxt" that claims relating to "loans at risk" were not heard by the official courts but were investigated by a court of arbitration set up by the corporations or merchants.[1]

In business practice a contract of great importance was that which conferred a mandate or power of attorney (*dastaβarīh*). The commission

[1] In describing the principles on which the arbitration courts of the corporations settled claims relating to these loans the Syriac text uses the Iranian legal expressions *pasand* and *vebdātastānih*, i.e., "Rechtsminus" and "Rechtsplus".

entrusted to a representative designated by a contract of this sort might be one of many kinds, but it was usually defined in the contract. This might state: "I have authorized Farraxv to pay money in settlement of a debt of mine, and to redeem my pledge", or the mandatory might be commissioned to sell something or to appear as representative in court (*dastaβar*, also *yātakgōβ*) of the person conferring this power on him (*mātak*) and on the latter's behalf, but only in cases covered by the commission and for the period laid down in it. The mandatory was compensated for expenses necessarily incurred. A contract of this type had to be put in writing.

A contractual agreement could be cancelled at the desire of both parties and declared ineffective (*aframān*). With some agreements there was a period of three days, counting from the moment when it was concluded, during which the contract could be cancelled at the desire of either party.

The parties to a contract might be not only physical persons but also juridical persons, represented by their functionaries. For example the Law-Book cites the case of a loan contract made between a fire-temple and a private individual, the temple being the creditor.

6. LAW-PROCEEDINGS

In Sasanian Iran justice was administered in law-courts which seem to have existed not only in the chief town of each district (*tasūk*) of a particular province (*šahr*), but also in nearly every rural division (*rōtastāk*) of every district. This may be inferred from the decision of the *rat*s and *kār-framān*s of the district of Artaxšahr-Xvarreh, dated in the reign of Khusrau I Anūshīrvān (531–79), which is quoted in the Law-Book.[1] One of the paragraphs of this decision speaks of the setting up of judicial offices in all the rōtastaks of this tasūk and of keeping no more than four scribes in each of these offices. Besides the judges, senior and junior, and the magupats and rats, who also performed judicial functions, mention is made of such high judicial dignitaries as the *Gōr dātaβar*, "the judge of the city of Gōr", or the *Kāzarōn dātaβar*, "the judge of the city of Kāzarūn", and even of a "judge of judges" (*Ērānšahr dātaβarān dātaβar*) with competence over the whole empire. The courts also dealt with suits brought by non-residents, who were not obliged to make a journey to attend court, but could act through

[1] *Mātakdān* 78.2–3.

their legal representatives. Kurds were subject to the jurisdiction of the judicial department situated in the area of their periodical migration.

Judicial documents, such as for instance the record of the questioning of a witness, could be passed on to another department of the judiciary. For a document drawn up in one tasūk to be acted on by the court in another tasūk, however, a special postscript had to be added to it.

Lawsuits were settled either by judicial process (*hamēmālīh* or *hamēmārīh*) in the courts or by the jurisdiction of the magupatān magupat. The latter procedure was resorted to only in exceptional cases. Although several forms of trial and judicature existed, the ordinary one was the legal procedure performed in the "courts of judges".

After a suit had been brought, judicial process took place in two stages, beginning with the preliminary hearing before the judges. At hearing the parties stated pleas and a record (*pursišn-nāmak*) was made of their statements which had to be signed by the litigants. The parties to the suit then presented their documentary evidence and named their witnesses. The judge was obliged to ascertain the authenticity (*vāvarakānīh*) of the documents and the seals they bore, and also establish the identity of the persons (*hamtanīh*; *āšnākīh ī tan*), their sex (*narīh ut mātakīh*), their age (colour of hair, *siyāh ut spētīh*), name and patronymic (*hamnāmīh*) and permanent place of residence; the same identification procedure was employed at the trial of the case in relation to other persons who were in any way involved in the matter being investigated. If either the plaintiff or the respondent was acting through a legal representative, the latter had to present a document proving his mandate, before he could be allowed by the judge to take part in the case. After this the judge approved the case for trial and named the day when the court would sit to try it; a period of one year was laid down as the maximum delay permissible between the beginning of an action and the holding of the trial. Actions in respect of trivial sums and offences were not sent to trial.

The day of the trial, both parties, and their witnesses had to appear in court to make their respective statements and give evidence. Court proceedings were recorded, the record being called *saxvan-nāmak*. A curious detail of the trial procedure was that, of the two judges presiding over it, one was the "plaintiff's judge" and the other the "respondent's judge"; verdict for the plaintiff was pronounced by the "respondent's judge", while the sitting of the court was conducted by the "plaintiff's judge" (or vice versa). Possibly the judges also performed

the functions of counsel. When the court had pronounced judgement, the plaintiff (*pēšēmāl*) and respondent (*pasēmāl*) declared their agreement (or disagreement) with the judgement, and a judicial order (*framān*) was drawn up, binding the parties to carry it out. Each of them received a copy of the document containing this order, signed by themselves as well as by the judge. In the event of a prison sentence the judge handed over a copy of the document to the officer in charge of records (*dīvān-pān*), and the condemned man himself to the jailer (*zēndānpān*) and warders (or "policemen", *GZYR(')ān*).

The costs of the trial had to be paid by the losing party. Since the actions where things of high value or grave offences were involved required a particularly thorough investigation and documentary recording, they cost more than those concerned with minor values and offences. Costs were increased in the case of a trial "delayed" through the fault of one of the litigants. As stated in the Law-Book the minimum amount was two drachms (if the disputed thing was worth not more than 10 drachms), while the maximum represented 95 drachms (this being the amount of costs charged upon a man found guilty of a capital offence).

If one of the parties disagreed with the court's decision, he could appeal (*must garzītan*), and then a second judicial investigation began, conducted by a senior judge or a magupat. The only judgements not subject to appeal were those given in actions relating to small values or to comparative petty offences.

Should the normal course of a trial be disrupted through the fault of one of the parties, e.g., through the failure of one of the litigants to appear, or should two representatives of the plaintiff make mutually contradictory statements,[1] then by decision of the court the subsequent investigation of the case took a different form, namely, that of a "delayed" or "defaulted" trial. The judges ordered the party who was to blame for a "default" (*hačašmānd*) to deposit, for the duration of the trial, a pledge equal in value to the thing in dispute, and in cases of robbery, violence, etc., the amount of the fine was added to this pledge. Until the trial was over the thing in dispute remained with the *de facto* holder.

In the event of renewed delay, the party responsible was obliged to

[1] This circumstance made it necessary to subpoena the author of their mandates (i.e. the litigant himself) and put off settlement of the matter to a fresh session of the court, at which he must be present. Renunciation by a representative of his commission in the course of a trial, or the need to submit an additional document or bring a new witness to the court, had similar consequences.

deposit a further pledge, equal in value to the first. If a third delay occurred, the court gave judgement whereby the party responsible for this delay lost both the case and his pledges, which were handed over to the successful party. After the first two delays, the party responsible might still win the case and recover his pledge.

Cases occurred in judicial practice, however, which could not be decided through an ordinary trial. Such cases were assigned for settlement by way of ordeal (*dātastān pat var*). This was arranged and carried out by a rat, and not by a judge or a magupat, whose competence did not extend beyond the limits of a trial such as has been described. The forms assumed by the ordeal (*var*) in the Sasanian period were various, and they included oath-taking. That one of the litigants was subjected to ordeal who was recognized as the one having the advantage. A woman or a slave could not be subjected to ordeal (exception was made in the case of a slave if he had defended his freedom before the court, affirming that he had been manumitted). At the end of a trial of this kind a special document was issued, a "letter about the ordeal" (*yazišn-nāmak*). If a litigant failed to appear at this trial the court also adopted the procedure of demanding a pledge, as described above.

Unlike the courts of the *dātaβar*s and magupats and the rat's court of ordeal, the court of the magupatān magupat (to which, as has been mentioned, exceptional cases were referred) did not function by way of trial. The magupatān magupat judged the case without seeing the persons concerned, and "alone" [*pat tan-ē(v)*]. The judgement he gave could be reviewed by no one: it was regarded as absolutely reliable, "even more trustworthy than the ordeal".

A wide variety of cases came before the courts: suits concerning things, claims regarding liability, accusations of criminal offences, of witchcraft (*yātūkīh*) and of religious offences (the propagation of "heresy", *zandīkīh*). There were also judicial offences, such as false witness, making untrue or inconsistent statements. Among the methods of punishments imposed by the courts were imprisonment and death. The most serious crimes were called *mark-arzān* (literally, "deserving death"): those found guilty of such crimes, even if they were not executed, were deprived of all legal capacity.

Within the narrow bounds of this chapter it is not possible to describe all the resourcefulness of Iranian law and its degree of

elaboration, which was advanced for its time. It must be said, however, that although Iranian law was to some extent influenced by Hellenistic law (but not by Roman), it was very distinctive both in system and in detail. A comparison of Iranian and Old Indian legal (and social) institutions reveals a number of kindred features. It is scarcely possible to suppose that this is to be explained by borrowing; it is rather a manifestation of the close kinship between these peoples. Indian law, for which we have a wealth of documents, was at a very much lower level of development than Iranian law.

Though it surrendered its position to the primitive law imposed upon Iran by its Arab conquerors, Iranian law did not disappear without trace, as the reader has been able to perceive from the example of the waqf. The question as to how much of Iranian law was taken over by the Muslims still awaits study. Future investigations in this direction will undoubtedly enable us to understand better the part played by Iran in the formation of Islamic civilisation.

Ward-Perkins, J. B. "Frontiere politiche e frontiere culturali", in *La Persia e il mondo Greco-Romano* (Accademia Nazionale dei Lincei, Rome, 1966), pp. 395–408.
Widengren, G. *Der Feudalismus im alten Iran.* Cologne, 1969.
Les Religions de l'Iran. Paris, 1968.
"Recherches sur le féodalisme iranien", *Orientalia Suecana* v (Uppsala, 1956), pp. 79–182.
Will, E. "L'art sassanide et ses prédécesseurs", *Syria* xxxix (1962), pp. 45–63.
Zaehner, R. C. *Zurvan: A Zoroastrian Dilemma.* Oxford, 1955.
Zakrzewski, C. "Un homme d'état du Bas-Empire: Anthémius", *Eos* xxxi (1928), pp. 417–38.

CHAPTER 16

Altheim, F. and Stiehl, R. *Die Araber in der alten Welt*, 6 parts in 5 vols. Berlin, 1964–8.
*Christensen, *L'Iran.*
Creswell, K. A. C. *Early Muslim Architecture*, 2 vols. Oxford, 1932–40.
Goldziher, I. *Muhammedanische Studien*, 2 vols. Halle, 1888–9. Eng. tr. C. R. Barber and S. M. Stern as *Muslim Studies*, 2 vols. London, 1967–71.
Jeffery, A. *The Foreign Vocabulary of the Qur'ān.* Baroda, 1938.
Kister, M. J. "al-Ḥīra. Some notes on its relations with Arabia", *Arabica* xv (Leiden, 1968), pp. 143–69.
*Maricq. "Res Gestae".
*Nöldeke, *Ṭabarī.*
Ringgren, K. V. H. *Studies in Arabian Fatalism.* Uppsala-Wiesbaden, 1955 (Uppsala Universitets Årsskrift 1955. 2).
Rothstein, G. *Die Dynastie der Laḫmiden in al-Ḥîra. Ein Versuch zur arabisch-persischen Geschichte zur Zeit der Sasaniden.* Berlin, 1899.
Siddiqi, A. *Studien über die Persischen Fremdwörter im klassischen Arabisch.* Göttingen, 1919.
Smith, S. "Events in Arabia in the 6th century A.D.", *BSOAS* xvi (1954), pp. 425–68.
Wilkinson, J. C. "Arab–Persian Land Relationships in Late Sāsānid Oman", *Proceedings of the Sixth Seminar for Arabian Studies* (London, 1973), pp. 40–51.

CHAPTER 17

Abel-Rémusat, J. P. *Histoire de la ville de Khotan.* Paris 1820.
Bailey, H. W. "Languages of the Saka", in *Iranistik* I, *Linguistik* (Leiden, 1958), pp. 131–54 (*HO* I.IV.1).
Barthold, W. *Zur Geschichte des Christentums in Mittelasien bis zur mongolischen Eroberung*, ed. R. Stübe. Tübingen, 1901.
Chavannes, É. *Documents sur les Tou-kiue (Turcs) Occidentaux.* St. Petersburg, 1903.
"Notes additionelles sur les Tou-kiue (Turcs) occidentaux", *T'oung Pao* v (1904), pp. 1–110.

Dieterich, K. *Byzantinische Quellen zur Länder- und Völkerkunde.* Leipzig, 1912.
Doerfer, G. *Mongolische und türkische Elemente im Neupersischen,* 4 vols. Wiesbaden, 1963–75.
Franke, O. *Geschichte des chinesischen Reiches,* 5 vols. Berlin-Leipzig, 1930–52.
Gabain, A. von. *Das Leben im uigurischen Königreich von Qočo, 850–1250.* Wiesbaden, 1973.
Göbl, R. *Documente zur Geschichte der iranischen Hunnen in Baktrien und Indien,* 4 vols. Wiesbaden, 1967.
Gropp, G. *Archäologische Funde aus Khotan, Chinesisch-Ostturkestan; Die Trinkler-Sammlung im Übersee-Museum, Bremen.* Bremen, 1974.
Hansen, O. "Die buddhistische und christliche Literatur", in *Iranistik* II, *Literatur* I (Leiden, 1968), pp. 77–99 (*HO* I.IV.2.1).
*Henning, "Mitteliranisch".
Herrmann, A. *Historical and commercial atlas of China.* Cambridge, Mass., 1935.
Sinor, D. *Inner Asia, a syllabus.* The Hague, 1969.
Spuler, B. "Geschichte Mittelasiens seit dem Auftreten der Türken", in *Geschichte Mittelasiens* (Leiden, 1966), pp. 123–310 (*HO* I.V.5).

CHAPTER 18

1. *Sources*

Documents from Avromān

*Henning, "Mitteliranisch", pp. 28–30.
Minns, E. H. "Parchments of the Parthian period from Avroman in Kurdistan", *JHS* XXXV (1915), pp. 22–65.
Nyberg, H. S. "The Pahlavi Documents from Avromān", *Le Monde Oriental* XVII (Uppsala, 1923), pp. 182–230.
Perikhanian, A. G. "Agnatičeskije gruppy v drevnem Irane", *VDI* 1968.3, pp. 45–8.

Parchments from Dura-Europos

Welles, C. B. *et al. The Excavations at Dura-Europos, Final Report* V, *Part* I, *The Parchments and Papyri.* New Haven, 1959. See especially P. Dura 20 (=DPg 10), pp. 109–16.

Documents from Nisā

*Diakonoff and Livshits. *Dokumenty iz Nisy.*
"Parfianskoje tsarskoje choziajstvo v Nise".
"Novye nakhodki dokumentov v staroi Nise".

Inscriptions

KA'BA-YI ZARDUŠT

Henning, W. B. "The Great Inscription of Šāpūr I", *BSOS* IX (1937–9), pp. 823–49.
"Notes on the Great Inscription of Šāpūr I", in *Prof. Jackson Memorial Volume* (Bombay, 1954), pp. 40–54.

*Maricq, "Res Gestae".
Sprengling, M. *Third Century Iran, Sapor and Kartir*. Chicago, 1953.

PAIKULĪ

Henning, W. B. "A Farewell to the Khagan of the Aq-Aqatārān", *BSOAS* XIV (1952), pp. 501–22.
Herzfeld, E. *Paikuli*, 2 Vols. Berlin, 1924.

FĪRŪZĀBĀD

Henning, W. B. "The inscription of Firuzabad", *Asia Major* IV (1954), pp. 98–102.

Pahlavi texts

Dādistān ī Dēnīk: Part I (questions 1–40), ed. T. D. Anklesaria (Bombay, 1911); Part II (questions 41–92), ed. P. K. Anklesaria (doctoral thesis, London University, 1958).
Dēnkart. See bibliography to Chapter 32(*a*), p. 1385.
de Menasce, J. "La conquête de l'iranisme et la recupération des mages hellénisés", *Annuaire de l'école pratique des hautes études, section des sciences religieuses* (Paris, 1956–7), pp. 3–12.
Rivāyat-ī Hēmīt-ī Ašavahištān: vol. I (text and transcription), ed. B. T. Anklesaria (Bombay, 1962); vol. II (translation and notes) not yet published.

Lawbooks

Pahlavi. *Mātigān ī hazār dātistān*. See bibliography to Chapter 32(*a*), p. 1389.
Syiac. "The lawbook of Yišō'-boxt" in E. Sachau (ed.), *Syrische Rechtsbücher* III (Berlin, 1914), pp. 1–201, 287–344.

Persian texts

Tansar-nāma: see bibliography to Chapter 32(*a*), p. 1387.
Dārāb Hormazyār's Rivāyat, ed. M. R. Unvala, 2 vols. Bombay, 1922.
The Persian Rivāyats of Hormazyār Framarz and others, tr. B. N. Dhabhar. Bombay, 1932.

2. *Literature*

Altheim, F. and Stiehl, R. *Finanzgeschichte der Spätantike*. Frankfurt am Main, 1957.
Bartholomae, C. *Die Frau im sasanidischen Recht*. Heidelberg, 1924 (Kultur und Sprache 5).
"Zum sasanidischen Recht"; see *Mātigān i hazār dātistān*, bibliography to Chapter 32(*a*), p. 1389.
Benveniste, É. "Les classes sociales dans la tradition avestique", *JA* 1932, pp. 117–34.
Boyce, M. "On the sacred Fires of the Zoroastrians", *BSOAS* XXXI (1968), pp. 52–68.
*Christensen, *L'Iran*.

Diakonoff, I. M. and Livshits, V. A. "Parfianskoje tsarskoje choziajstvo v Nise", *VDI* 1960.2, pp. 14–38.
Frye, R. N. "Notes on the Early Sassanian State and Church", *Studi orientalistici in onore di G. Levi della Vida* I (Rome 1956), pp. 314–335.
de Menasce, J.-P. *Feux et fondations pieuses dans le droit sassanide*. Paris, 1964.
Pagliaro, A. "Anticresi nel diritto sasanidico", *RSO* XV (1935), pp. 275–315.
Perikhanian, A. G. "Agnatičeskije gruppy v drevnem Irane", *VDI* 1968.3, pp. 28–53.
"Notes sur le lexique iranien et armenien", *REA* V (1968), pp. 9–23.
"On some Pahlavi Legal Terms", in M. Boyce and I. Gershevitch (eds), *W. B. Henning Memorial Volume* (London, 1970), pp. 349–57.
Pigulevskaya, N. *Goroda Irana v rannem srednevekovje*. Moscow–Leningrad, 1956. French tr. as *Les villes de l'État iranien aux époques parthe et sassanide*. Paris, 1963.
Widengren, G. "Recherches sur le féodalisme iranien", *Orientalia Suecana* V (Uppsala, 1956), pp. 79–182.

CHAPTER 19

Altheim, F. and Stiehl, R. *Asien und Rom* (Tübingen, 1952); reviewed by W. B. Henning in *Gnomon* XXVI (1954), pp. 476–80.
Bellinger, A. R. and Welles, C. B. "A Third-Century Contract of sale from Edessa in Osrhoene", *YCS* V (1935), pp. 95–154.
Bickerman, E. J. *Les Institutions des Séleucides*. Paris, 1938.
Borisov, A. Y. and Lukonin, V. G. *Sasanidskie Gemmy* (Sasanian intaglios). Leningrad, 1963.
*Christensen, *L'Iran*.
Cumont, F. "Une lettre du roi Artaban III à la ville de Suse", *CRAI* 1932, pp. 238–60.
"A letter of Artaban III to the city of Susa", *JCOI* XXVII (1934), pp. 66–74.
Debevoise, N. *A Political History of Parthia*. Chicago, 1938.
Dittenberger, W. *Orientis Graeci Inscriptiones Selectae*, 2 vols. Leipzig, 1903–5; Hildesheim, 1970.
*Diakonoff and Livshits,
Dokumenty iz Nisy.
"Novye nakhodki dokumentov v staroi Nise".
Parthian economic documents from Nisā.
Diakonoff, M. M. *Ocherk istorii drevnego Irana* (Outline of the history of ancient Iran). Moscow–Leningrad, 1961.
Frye, R. N. "Some early Iranian titles", *Oriens* XV (1961), pp. 353–55.
The Heritage of Persia. London, 1962.
The Parthian and Middle Persian Inscriptions of Dura-Europos. London, 1968 (*CIIr*, Part III, Vol. III, Portfolio I).